

The seal of the Texas Comptroller of Public Accounts is visible in the background. It features a five-pointed star in the center, surrounded by a wreath. The words "THE COMPTROLLER OF PUBLIC ACCOUNTS" are inscribed around the perimeter, and "TEXAS" is at the bottom.

Glenn Hegar

Texas Comptroller of Public Accounts

Continuing Education Course for Appraisal Review Board Members

February 2015



Continuing Education Course for Appraisal Review Board Members

Tax Code Section 5.041 requires the Comptroller's office to provide training to all appraisal review board (ARB) members annually. Section 5.041(e-3) restricts who may provide the returning member training. Continuing education may only be provided by the Comptroller's office or a service provider under contract with the Comptroller's office. Training on the subjects addressed in the Comptroller's continuing education course may not be provided by a chief appraiser, appraisal district staff, a member of an appraisal district board of directors, a member of the ARB or the staff of a taxing unit. This means that ARB members may not train themselves on appraisal issues or any other matter that is listed in Tax Code Section 5.041(e-1). An ARB may retain an appraiser certified by the Texas Appraiser Licensing and Certification Board to instruct the members on valuation methodology if the appraisal district budgets for such training, as authorized by Tax Code Section 5.041(h). An ARB may consult with its legal counsel authorized by Tax Code Section 6.43(a)—(e) and if budgeted by the board of directors on any matter. It may also consult with the appraisal district clerical staff authorized by Tax Code Section 6.43(f) concerning the scheduling and arranging of hearings, as well as any other clerical matter regarding ARB operations.

You may email general questions to:

ptad.cpa@cpa.texas.gov.

Sign up to receive Comptroller's office email updates
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Address general questions to PTAD by writing to:

Property Tax Assistance Division

P.O. Box 13528

Austin, TX 78711-3528

or by calling

the ARB Hotline: 1-800-252-7551

Tax Code Section 5.041(f) states:

The comptroller may not advise a property owner, a property owner's agent, or the chief appraiser or another employee of an appraisal district on a matter that the comptroller knows is the subject of a protest to the appraisal review board. The comptroller may provide advice to an appraisal review board member as authorized by Subsection (a)(4) of this section or Section 5.103 and may communicate with the chairman of an appraisal review board or a property owner liaison officer concerning a complaint filed under Section 6.052.

Subsection (a)(4) authorizes the comptroller to provide answers to technical questions relating to the duties and responsibilities of ARB members and property appraisal issues. Section 5.103 requires the comptroller to prepare model hearing procedures for ARBs that must address specific issues. It also requires the comptroller to prescribe the contents of a survey form for the purpose of providing the public with a reasonable opportunity to offer comments and suggestions concerning the ARB.

Therefore, the Comptroller's office may provide advice to ARB members concerning:

- the duties and responsibilities of the appraisal review board;
- property appraisal issues;
- the comptroller's model hearing procedures; and
- the comptroller's appraisal review board survey.

In addition, the Comptroller's office may communicate with the ARB chairman or the property owner liaison officer about written complaints that the ARB has authority to resolve and that are filed with the appraisal district board of directors.



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Introduction

In 2009, a number of proposals aimed at reforming the way property is appraised and property values are reviewed were adopted by the Texas Legislature. As part of the reform, the Legislature directed the Comptroller's office to approve curricula and provide materials for use in providing additional training and education for appraisal review board (ARB) members.¹ This continuing education manual has been developed as part of the Comptroller's response to that directive.

The Comptroller's office publishes the *Appraisal Review Board Manual* that serves as a reference guide for ARB members. The Comptroller's Property Tax Assistance Division (PTAD) has, for many years, used the *Appraisal Review Board Manual* to provide training to new ARB members. The Legislature's desire, however, was that training and education of ARB members continue through a member's service on the ARB and include continuing education in the following areas:

- the cost, income and market data comparison methods of appraising property;
- the appraisal of business personal property;
- the determination of capitalization rates for property appraisal purposes;
- the duties of an ARB;
- the requirements regarding the independence of an ARB from the board of directors, chief appraiser and other employees of the appraisal district;
- the prohibitions against ex parte communications applicable to ARB members;
- the Uniform Standards of Professional Appraisal Practice (USPAP);

- the duty of the appraisal district to substantiate its determination of the value of property;
- the requirements regarding the equal and uniform appraisal of property;
- the right of a property owner to protest the appraisal of the property as provided by Tax Code Chapter 41; and
- a detailed explanation of each of the actions described by Tax Code Sections 25.25, 41.41(a), 41.411, 41.412, 41.413, 41.42 and 41.43 so that ARB members are fully aware of each of the grounds on which a property appraisal can be appealed.

This more focused treatment of the material included in the *Appraisal Review Board Manual* is intended as a continuing education course for ARB members to take during their second year of service. A person may not participate in a hearing conducted by the ARB, vote on a determination of a protest or be reappointed to an additional term on the ARB until the person has completed the continuing education course and received a certificate of course completion. ARB members reappointed to additional terms must successfully complete the course in each year they continue to serve.

The material in this manual, though comprehensive, is not exhaustive. Property tax law is complex and constantly changing, whether by actions of the Legislature or by interpretation by the courts or the attorney general. ARB members should consult legal counsel in matters that are beyond the scope of this manual or subject to legal interpretation.



CHAPTER 1

Legal Issues

This chapter addresses various provisions of law relating to ARBs. The intent of this chapter is to provide ARB members with information regarding statutory provisions governing taxpayer protests, with particular focus on specific statutory provisions.

Introduction to ARB Responsibilities

An ARB fulfills a vital and integral function in the property tax system. The U.S. Constitution provides that no person's property may be harmed or affected by governmental action unless due process is provided to the person affected by the action. In the context of taxation, Texas courts have held that due process affords taxpayers a right to be heard before final assessment.² In the context of property tax, ARBs provide taxpayers that right.³

Statutory Duties

The Tax Code and Comptroller rules set forth the duties of the ARB. These duties consist of both procedural and substantive responsibilities. The basic substantive duties are outlined in Tax Code Section 41.01 and include the following:

- determining protests initiated by property owners;
- determining challenges initiated by taxing units;
- correcting clerical errors in the appraisal records and the appraisal rolls;
- acting on motions to correct appraisal rolls;
- determining whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal for agricultural and timber land; and
- taking any other action or making any other determination specifically authorized or required by the Tax Code.

Independence of the ARB

When it enacted the Tax Code, the Texas Legislature created appraisal districts as political subdivisions⁴ and ARBs as appointed boards with specific statutory responsibilities.⁵ Texas

courts have recognized this legislative separation—directly acknowledging that the appraisal district and the ARB are separate and distinct bodies.⁶ Although most ARB members are appointed by appraisal district boards of directors and an ARB must use the staff of the appraisal office for clerical assistance, the ARB maintains an independence from the appraisal district's board of directors and appraisal district staff, including the chief appraiser.⁷

Provisions enacted by the Legislature to ensure an ARB's independence include the following:

An individual is ineligible to serve on an ARB if the individual is a member of the appraisal district's board of directors, an officer or employee of the appraisal district, an employee of the Comptroller, or a member of the governing body, officer, or employee of a taxing unit.⁸

An individual is ineligible to serve on an ARB if the individual is related within the second degree of consanguinity or affinity to an individual who is engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or of representing property owners for compensation in proceedings under the Tax Code in the appraisal district for which the ARB is established.⁹

An individual is ineligible to serve on an ARB if the individual is related within the third degree of consanguinity or within the second degree of affinity to a member of the appraisal district's board of directors.¹⁰

An individual is not eligible to be appointed or to serve on an ARB if the individual or a business entity in which the individual has a substantial interest is a party to a contract with the appraisal district or with a taxing unit that participates in the appraisal district.¹¹

An appraisal district may not enter into a contract with a member of the ARB established for the appraisal district or with a business entity in which a member of the ARB has a substantial interest.¹²

A taxing unit may not enter into a contract with a member of the ARB established for an appraisal district in which the taxing unit participates or with a business entity in which a member of the ARB has a substantial interest.¹³

ARBs are appointed to act independently of the appraisal district and to make fair and impartial determinations.

Ex Parte Communications

Pursuant to Tax Code Section 41.66(f), an ARB member may not communicate with another person concerning the following:

- (1) the evidence, argument, facts, merits or any other matters related to a property owner's protest, except during the hearing on the protest; or
- (2) a property that is the subject of a protest, except during a hearing on another protest or other proceeding before the ARB at which the property is compared to other property or used in a sample of properties.¹⁴

This prohibition, as stated, includes communications with another person.¹⁵ Thus, the prohibition includes, but is not limited to, communications with the property owner, the property owner's agent, members of the appraisal district's board of directors, the chief appraiser, members of the appraisal district staff and even communications with the ARB member's family. A communication could be an in-person conversation, a telephone call, an e-mail, a letter or any other medium used for conveying information.

An ARB member commits a Class A misdemeanor if the member communicates with the chief appraiser or another employee of the appraisal district or a member of the board of directors of the appraisal district for which the ARB is established in violation of Tax Code Section 41.66(f).¹⁶ Under Penal Code Section 12.21, a Class A misdemeanor may be punished by a fine of up to \$4,000, confinement in jail for up to one year, or both.

Tax Code Section 6.411(b) provides that a chief appraiser or another employee of the appraisal district, a member of

a board of directors of an appraisal district or a property tax consultant or attorney representing a party to a proceeding before the ARB commits a Class A misdemeanor if the person communicates with a member of the ARB established for the appraisal district with the intent to influence a decision by the member in the member's capacity as a member of the ARB. The prohibitions of Tax Code Section 6.411 do not apply to communications between the ARB and its legal counsel or to communications with an ARB member by the chief appraiser or another employee or a member of the board of directors of an appraisal district or a property tax consultant or attorney representing a party to a proceeding before the ARB: (1) during a hearing or other proceeding before the ARB; (2) that constitute social conversation; (3) that are specifically limited to and involve administrative, clerical or logistical matters related to the scheduling and operation of hearings, the processing of documents, the issuance of orders, notices and subpoenas and the operation of the ARB; or (4) that are necessary and appropriate to enable the board of directors of the appraisal district to determine whether to appoint, reappoint or remove a person from the ARB.¹⁷

Except during a hearing or other proceeding or as provided by Tax Code Section 5.041(h) authorizing the training by a licensed appraiser and Tax Code Section 6.411(c-1) discussed in the preceding paragraph, the following persons may not communicate with a member of an ARB about a course provided by the Comptroller's office or any matter presented or discussed during the course: (1) the chief appraiser of the appraisal district for which the ARB is established; (2) another employee of the appraisal district for which the ARB is established; (3) a member of the board of directors of the appraisal district for which the ARB is established; (4) an officer or employee or a taxing unit that participates in the appraisal district for which the ARB is established; and (5) an attorney who represents or whose law firm represents the appraisal district or a taxing unit that participates in the appraisal district for which the ARB is established.¹⁸

At the beginning of a hearing on a protest, each member of the ARB hearing the protest must sign an affidavit stating that he or she has not communicated with another person in violation of Tax Code Section 41.66(f).¹⁹

Taxpayer Protests

Under Tax Code Chapter 41, property owners have the right to protest the following actions before the ARB:

- determination of the appraised value of the owner's property or, in the case of land appraised as agricultural or timber land, determination of its appraised or market value;
- unequal appraisal of the owner's property;
- inclusion of the owner's property on the appraisal records;
- denial to the property owner in whole or in part of a partial exemption;
- determination that the owner's land does not qualify for agricultural or timber land appraisal;
- identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll;
- determination that the property owner is the owner of property;
- a determination that a change in use of land appraised as agricultural or timber land has occurred; or
- any other action of the chief appraiser, appraisal district or ARB that applies to and adversely affects the property owner.²⁰

Tax Code Section 25.25 provides property owners with additional rights to correct the appraisal roll.²¹ Protests brought pursuant to Tax Code Chapter 41 and motions filed pursuant to Tax Code Section 25.25 are determined by the ARB.

Explanation of Selected Statutes **Right of Protest (41.41(a))**

As outlined above, Tax Code Section 41.41(a) sets forth nine grounds for protest. A property owner's protest might be based on one of the grounds provided, or it might be based on multiple grounds.

Determination of the Appraised or Market Value

Texas Constitution, Article VIII, Section 1 provides that all real and tangible personal property in Texas, unless exempt or permitted by the Constitution, shall be taxed in proportion to its value as ascertained by law. The Tax Code provides that, except as otherwise provided in Tax Code Chapter 23, all taxable property is appraised at its market value as of Jan. 1.²² Tax Code Chapter 23 addresses appraisal methods and procedures, including special appraisal for agricultural and timber land.

The Tax Code defines market value as the price at which a property would transfer for cash or its equivalent under prevailing market conditions if exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.²³

Pursuant to Tax Code Section 41.41(a)(1), a property owner may protest a determination of the appraised value of the owner's property or, in the case of land appraised as provided by Tax Code Chapter 23, Subchapter C, D, E or H, determination of its appraised or market value.²⁴ Tax Code Chapter 23, Subchapters C, D, E and H pertain to land designated for agricultural use, appraisal of agricultural land, appraisal of timber land and appraisal of restricted-use timber land, respectively.

Tax Code Section 41.41(a)(1) protests are discussed at greater length in the section entitled *Protest of Determination of Value or Inequality of Appraisal*.

Unequal Appraisal

Texas Constitution, Article VIII, Section 1 provides that taxation shall be equal and uniform. Pursuant to Tax Code 41.41(a)(2), a property owner may protest the unequal appraisal of the owner's property.²⁵ The property owner may have a right to have his value changed even if his property is appraised at its market value.

Tax Code Section 41.41(a)(2) protests are discussed at greater length in the sections entitled *Protest of Determination of Value or Inequality of Appraisal and Requirements Regarding the Equal and Uniform Appraisal of Property*.

Inclusion of the Owner's Property on the Appraisal Records

Pursuant to Tax Code Section 41.41(a)(3), a property owner may protest inclusion of the owner's property on the appraisal records. Thus, if property is included in the appraisal records that a property owner asserts should not be included, the property owner is entitled to protest. For example, a property owner might protest inclusion on the appraisal records of an improvement to real property and assert that the listed improvement does not exist. Tax Code Section 41.41(a)(3), however, does not delineate specific types of protest; thus, the factual bases of protests brought under Tax Code 41.41(a)(3) may vary substantially.²⁶

Denial to Property Owner In Whole or In Part of a Partial Exemption

Tax Code Section 41.41(a)(4) provides a property owner the right to protest denial to the property owner in whole or in part of a partial exemption. Common partial exemptions include those permitted for residence homesteads, individuals with disabilities and individuals who are age 65 or older.²⁷ Tax Code Chapter 11 includes provisions relating to numerous exemptions permitted by law and provisions relating to administration of exemptions. As stated in Tax Code Section 11.01(a), all real and tangible personal property that the State of Texas has jurisdiction to tax is taxable unless exempt by law.

Exemptions are strictly construed, as stated by the Texas Supreme Court:

[E]xemptions from taxation are not favored by the law and will not be favorably construed. Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally. Accordingly, the burden of proof of clearly showing that the [claimant] falls within the statutory exemption is on the claimant.²⁸

Determination that Owner's Land Does Not Qualify for Agricultural or Timber Land Appraisal

Tax Code Section 41.41(a)(5) provides a property owner the right to protest a determination that the owner's land does not qualify for appraisal as provided by Tax Code Chapter 23, Subchapter C, D, E or H. As noted above, Tax Code Chapter 23, Subchapters C, D, E and H pertain to land designated for agricultural use, appraisal of agricultural land, appraisal of timber land and appraisal of restricted-use timber land, respectively.

Identification of Taxing Units in Which Owner's Property is Taxable

Pursuant to Tax Code Section 41.41(a)(6), a property owner may protest identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll. One example of a protest that might be pursued under this provision would be a property owner's protest alleging that the property at issue is in a different school district than that reflected on the appraisal district's roll.

Determination that Property Owner is the Owner of Property

Tax Code Section 41.41(a)(7) provides a property owner the right to protest a determination that the property owner is the owner of property. A property owner, thus, might bring a protest under Tax Code Section 41.41(a)(7) to assert non-ownership of any property the appraisal district has listed as being owned by the property owner.

Determination that Change in Use of Land Appraised as Agricultural or Timber Land has Occurred

Pursuant to Tax Code Section 41.41(a)(8), a property owner may protest a determination that a change of use of land appraised under Tax Code Chapter 23, Subchapter C, D, E or H has occurred. Again, Tax Code Chapter 23, Subchapters C, D, E and H pertain to land designated for agricultural use, appraisal of agricultural land, appraisal of timber land and appraisal of restricted-use timber land, respectively.

If there is a change of use of property appraised pursuant to Subchapters C, D, E or H, additional taxes may be imposed.²⁹ The appraisal district must notify a property owner of a determination that a change of use has occurred.³⁰ A property owner must protest the determination not later than the 30th day after the date the notice of the determination is delivered to the property owner.³¹

Any Other Action

Tax Code Section 41.41(a)(9) provides a property owner the right to protest "any other action of the chief appraiser, appraisal district, or ARB that applies to and adversely affects the property owner." By its terms, this provision is not limited. Therefore, an ARB might be presented with any number of specific grounds of protest under Tax Code Section 41.41(a)(9).

Protest for Failure to Give Notice (41.411)

Tax Code Section 41.411 provides that a property owner is entitled to protest before the ARB the failure of the chief appraiser or the ARB to provide or deliver any notice to which the property owner is entitled.³² If failure to provide or deliver the notice is established, the ARB must determine a protest made by the property owner on any other grounds of protest authorized by the Tax Code relating to the property to which the notice applies.³³ However, a property owner who protests under Tax Code Section 41.411 must comply with the tax payment requirements of Tax Code Section 41.4115 or the

property owner forfeits the property owner's right to a final determination of the protest.³⁴

Forfeiture of Remedy for Nonpayment of Taxes (41.4115)

The pendency of a protest under Tax Code Section 41.411 does not affect the delinquency date for the taxes on the property subject to the protest. However, the delinquency date applies only to the amount of taxes that are not in dispute and is postponed to the 125th day after the date one or more taxing units first delivered written notice of the taxes due. If the property owner complies with this provision and pays the taxes not in dispute, the delinquency date for any additional taxes finally determined to be due on the property is determined under Tax Code Section 42.42(c) and that additional amount is not delinquent.³⁵

A property owner who files a protest under Tax Code Section 41.411 is required to pay, before the delinquency date, the amount of taxes due on the portion of the taxable value of the property subject to the protest that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the protest. The ARB may excuse this requirement based on an oath of inability to pay.³⁶

A property owner who pays an amount of taxes greater than required does not forfeit the right to a final determination of the protest by making the payment. If the property owner files a timely protest under Tax Code Section 41.411, taxes are considered to have been paid under protest, even if paid before the protest is filed.³⁷

On the motion of a party, the ARB is required to hold a hearing to review and determine compliance with this section. The ARB may set such terms and conditions on any grant or relief as may be reasonably required by the circumstances. If the ARB determines that the property owner has not substantially complied with this section, it is required to dismiss the pending protest. If the ARB determines that the property owner substantially but not fully complied with this section, it is required to dismiss the pending protest unless the property owner fully complies with its determination within 30 days of the determination.³⁸

Person Acquiring Property After Jan. 1 (41.412)

Typically, either the person who owned the property Jan. 1 or that person's agent files a protest. However, a property owner who acquires property between Jan. 1 and the protest

deadline may file a protest in the same manner as the Jan. 1 property owner.³⁹ A new owner who acquires the property while a protest regarding the property is pending may, on application to the ARB, proceed with the protest in the same manner as the prior owner who initiated the protest.⁴⁰

Protest by Person Leasing Property (41.413)

Certain lessees are also entitled to protest. A person leasing tangible personal property or real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the ARB a determination of the appraised value of the property if the property owner does not file a protest on the property.⁴¹ The property owner is required to send to the lessee a copy of any notice of reappraisal of the property received by the property owner.⁴² Failure to do so, however, does not affect the protest deadline for the property in question.⁴³ The ARB is required to deliver a copy of any notice relating to the protest and the order determining protest to the owner of the property and the person bringing the protest.⁴⁴

Protest of Situs (41.42)

Tax Code Section 41.42 pertains to protests of situs. Tax Code Chapter 21, entitled Taxable Situs, addresses situs with regard to real property, tangible personal property generally, vessels and other watercraft, railroad rolling stock, commercial aircraft, business aircraft and certain intangible property. Pursuant to Tax Code Section 41.42, the ARB must rule in favor of the protesting party filing a protest against the inclusion of property on the appraisal records for an appraisal district on the ground that the property does not have taxable situs in that appraisal district if the property owner establishes that the property is subject to appraisal by another appraisal district or that the property is not taxable in Texas.⁴⁵ The chief appraiser of the appraisal district in which the property owner prevails in a protest of situs must notify the appraisal office of the district in which the property owner has established situs.⁴⁶

Burden of Protest

Duty of the Appraisal District to Substantiate Its Determination of Value

Explanations, descriptions and definitions of "preponderance of the evidence" and "clear and convincing evidence" vary. In civil jury trials in Texas, a case is submitted to the jury by written definitions, instructions and questions—collectively referred to as a jury charge. The State Bar of Texas publishes

pattern jury charges prepared by committees of judges and attorneys. Trial courts routinely rely on the pattern jury charges and the Texas Supreme Court rarely disapproves of them.⁴⁷ The following are definitions and instructions included in the Texas pattern jury charges:

Preponderance of the evidence means the greater weight and degree of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that a fact is more likely true than not true.

Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

As discussed above, except in certain circumstances, in a protest brought pursuant to Tax Code Section 41.41(a)(1), relating to determination of value, or Tax Code Section 41.41(a)(2), relating to unequal appraisal, the appraisal district has the burden of proof at the ARB hearing.⁴⁸ The appraisal district has the duty to substantiate the district's determination of the value of the property. In most of these protests, the appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the ARB hearing.⁴⁹ However, in some cases, the appraisal district has a higher burden of proof—the burden of establishing the value of the property by clear and convincing evidence presented at the ARB hearing.⁵⁰ The appraisal district must also have substantial evidence to support an increase in value in cases in which the value was determined in a preceding year by the ARB, an arbitrator or the court.⁵¹ If the appraisal district fails to meet the applicable standard, the ARB must rule in favor of the property owner.⁵²

Protest of Determination of Value or Inequality of Appraisal (41.43)

As previously discussed, property owners are entitled to protest determinations of value and unequal appraisal. Pursuant to Tax Code Section 41.41(a)(1), a property owner may protest a determination of the appraised value of the owner's property or, in the case of land appraised as agricultural or timber land, determination of its appraised or market value.⁵³

Pursuant to Tax Code Section 41.41(a)(2), a property owner may protest the unequal appraisal of the owner's property.⁵⁴

In most Tax Code Section 41.41(a)(1) and 41.41(a)(2) protests, the appraisal district has the burden of proof by a preponderance of the evidence.⁵⁵ One exception, in which the appraisal district has a higher standard of proof, involves certain protests relating to property valued at \$1 million or less.⁵⁶ In a protest relating to a property with a market or appraised value of \$1 million or less as determined by the appraisal district, the property owner may file with the ARB an appraisal of the property performed by a certified appraiser that supports the appraised or market value of the property asserted by the property owner.⁵⁷ If the following requirements have been met, the appraisal district has the burden of establishing the value of the property by clear and convincing evidence presented at the ARB hearing:

- the appraisal must have been performed by an appraiser certified under Occupations Code Chapter 1103;
- the appraisal must have been performed not later than the 180th day before the date of the first day of the hearing;
- the property owner must have delivered a copy of the appraisal to the chief appraiser not later than the 14th day before the date of the first day of the hearing;
- the property owner must have filed a copy of the appraisal with the ARB;
- the appraisal must support the appraised or market value of the property asserted by the property owner; and
- the appraisal must be legally valid.⁵⁸

Pursuant to the Tax Code, to be valid, the appraisal filed by the property owner must be attested to before an officer authorized to administer oaths and must include the following:

- the name and business address of the certified appraiser;
- a description of the property that was the subject of the appraisal;
- a statement that the appraised or market value of the property: (1) was, as applicable, the appraised or market value of the property as of Jan. 1 of the current tax year, and (2) was determined using a method of appraisal authorized or required by Tax Code Chapter 23; and
- a statement that the appraisal was performed in accordance with the USPAP.⁵⁹

If the requirements have been met and the appraisal district has the burden of establishing the value of the property by clear and convincing evidence, the protest must be determined in favor of the property owner if the appraisal district fails to meet that standard.⁶⁰

The appraisal district also has a burden of establishing the value of property by clear and convincing evidence presented at the hearing on a protest under Tax Code Sections 41.41(a)(1) or 41.41(a)(2) if:

- the appraised value of the property was lowered under Tax Code Subtitle F (Subtitle F includes protests filed with the ARB, binding arbitration and lawsuits) in the preceding tax year;
- the appraised value of the property in the preceding tax year was not established as a result of a written agreement between the property owner or the property owner's agent and the appraisal district under Tax Code Section 1.111(e); and
- not later than the 14th day before the date of the first day of the hearing, the property owner files with the ARB and delivers to the chief appraiser:
 - (1) information, such as income and expense statements or information regarding comparable sales, that is sufficient to allow for a determination of the appraised or market value of the property if the protest is authorized by Tax Code Section 41.41(a)(1); or
 - (2) information that is sufficient to allow for a determination of whether the property was appraised unequally if the protest is authorized by Tax Code Section 41.41(a)(2).⁶¹

The legal provision regarding delivery of this information does not impose a duty on the property owner to provide it.⁶² The provision is merely a condition as to the applicability of the evidence standard.⁶³ If the appraisal district fails to meet this burden of establishing the value of property by clear and convincing evidence presented at the hearing, the protest must be determined in favor of the property owner.⁶⁴

ARBs must also consider the issue of substantial evidence when a protest is brought concerning certain value increases.⁶⁵ The chief appraiser is prohibited from increasing the appraised value of property in the year following a tax year in which the appraised value of the property is lowered under Tax Code Subtitle F unless the increase is reasonably

supported by substantial evidence.⁶⁶ As previously noted, Tax Code Subtitle F includes protests filed with the ARB, binding arbitration and lawsuits. The substantial evidence must be based on all of the reliable and probative evidence in the record considered as a whole.⁶⁷ If the final determination was based on a claim of unequal appraisal this substantial evidence requirement may be met by presenting evidence showing that the inequality has been corrected with regard to the properties that were considered to be comparable in determining the value of the subject property.⁶⁸ The burden of proof is on the chief appraiser to support an increase in the appraised value of property under these circumstances.⁶⁹

Another exception to the general rule that the appraisal district has the burden of proof by a preponderance of the evidence in Tax Code Sections 41.41(a)(1) and 41.41(a)(2) involves protests relating to property subject to rendition or reporting requirements under Tax Code Chapter 22.⁷⁰ Under this exception, set forth in Tax Code Section 41.43(d), the burden of proof actually shifts to the property owner.⁷¹ If a protesting property owner fails to deliver, before the date of the hearing, a rendition statement or property report required by Tax Code Chapter 22 or a response to the chief appraiser's request for information under Tax Code Section 22.07(c), the property owner—rather than the appraisal district—has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing.⁷² If the property owner fails to meet that standard, the protest must be determined in favor of the appraisal district.⁷³

In addition to the standards outlined above, the Tax Code provides express direction to appraisal districts involved in unequal appraisal protests and to ARBs hearing such protests.⁷⁴ Pursuant to Tax Code Section 41.43(b), a protest on the ground of unequal appraisal of property must be determined in favor of the protesting party unless the appraisal district establishes one of the following situations:

- the appraisal ratio of the property is equal to or less than the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;
- the appraisal ratio of the property is equal to or less than the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the protest; or

- the appraised value of the property is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted.⁷⁵

In each of the contexts discussed in this section, evidence includes the data, schedules, formulas or other information used to establish the matter at issue.⁷⁶

Requirements Regarding the Equal and Uniform Appraisal of Property

Remedies for unequal appraisal permit values to be reduced even if the market values determined by the local appraisal districts are correct. As noted earlier, pursuant to Tax Code Section 41.43(b), a protest on the ground of unequal appraisal of property must be determined in favor of the protesting party unless the appraisal district establishes one of the situations on page 9.

If the property owner presents evidence of inequality of appraisal, the ARB must weigh the evidence presented by the property owner and that presented by the appraisal district to determine the protest. Considerable attention to requirements of the law regarding the calculation of median level of appraisal is required in unequal appraisal protests.

Numerous issues regarding unequal appraisal and the elements set forth in the Tax Code regarding unequal appraisal have been the subject of litigation.

In 2001, the 14th Court of Appeals in Houston held that “if a conflict exists between taxation at market value and equal and uniform taxation, equal and uniform taxation must prevail.” *Harris County Appraisal District v. United Investors*, 47 S.W.3d 648 (Tex. App. – Houston [14th Dist.] 2001, no writ). Since that time, the subject of how to determine “the median appraised value of a reasonable number of comparable properties appropriately adjusted” as permitted by Tax Code Section 42.26(a)(3) has been a highly litigated issue.

In *United Investors*, the witness whose testimony was accepted by the Court made adjustments to values on the appraisal roll “downward and upward based on location, closeness to traffic volume, age, depreciation from cost schedules, and access to the shopping center.” The selection of the comparable properties was “based on characteristics which would tend to most influence value, like location, age and physical characteristics.”⁷⁷ These adjustments have been used by appraisal

districts and property owners in litigation regarding unequal appraisal since that time.

In 2002, the 14th Court of Appeals considered another Harris County Appraisal District case. In *Weingarten Realty Investors v. Harris County Appraisal District*, 93 S.W.3d 280 (Tex. App. – Houston [14th Dist.] 2002, no writ), the trial court permitted the testimony of the property owner’s sole expert, David Dominy, at the bench trial, but then issued an order excluding his testimony and ordering a take-nothing judgment against Weingarten. The Court of Appeals upheld the trial court’s discretion in excluding the evidence. Its analysis of Dominy’s testimony and cross-examination is instructive. The Court held that the appraisal district was able to demonstrate the expert’s unreliability through its cross-examination on several matters:

- The comparable properties were significantly smaller retail centers.
- Nine of the 10 comparable properties had per-square-foot appraised values significantly lower than the subject property.
- Only 10 comparables were used even though there were 191 retail centers in the northwest quadrant of Harris County where the subject was located.
- Portions of the retail centers were used in the analysis.
- Only physical characteristics of condition, age, size and location were used in adjusting the comparables.
- The percentage adjustment for each characteristic of the comparables was too subjective.

Because of this cross-examination, the Court of Appeals held that the trial court had a sufficient basis to reject the expert’s testimony as unreliable. The Court stated the methodology necessary to perform the calculation required by Tax Code Section 42.26. An appraisal expert must select a reasonable number of comparable properties and then take the appraised value from the public record and appropriately adjust them to the subject property. After the adjustments, “the appropriately adjusted comparable properties are arrayed and a median is determined.”⁷⁸ This test is a restatement of the one articulated in *United Investors*.

Four years later, the 1st Court of Appeals in Houston considered the methodology for making adjustments in considering the reliability of the property owner’s witness. In *Harris County Appraisal District v. Kempwood Plaza*, 186 S.W.3d 155 (Tex. App. – Houston [1st Dist.] 2006, no writ), the Court

permitted testimony from the property owner's expert concerning adjustments in an equal and uniform report concerning the value of a shopping center. The Court held that it is not an error for an appraiser to use his or her personal experience and expertise to make certain determinations. Further, the fact that the property owner's appraiser limited the representative sample to a single land use code and a single building class took into account a number of adjustments that would have been made if the sample were larger. The appraiser made adjustments based on location, age and size, which the Court held were reliable. The appraiser testified, and the Court upheld, that his use of a single building class took into account "individual wear and tear, maintenance, updating, and remodeling over the years,"⁷⁹ so that effective age adjustments were not required. The implication is that effective age adjustments would be appropriate in certain cases, depending on the property sample selected and the characteristics of the property.

Adjustments for economic factors were recognized in the *United Investors* case and in a memorandum opinion from the 1st Court of Appeals in Houston. *In re MHCB (USA) Leasing & Finance Corp. and Valero Refining-Texas, L.P.*, 2006 Tex. App. LEXIS 3515 (Tex. App. – Houston [1st Dist.] 2006, no pet.)(unpublished), concerned the equal and uniform appraisal of a coker plant in Galveston County. The Court observed that Tax Code Section 42.26(a)(3) does not delineate what specific considerations are relevant for adjustments. It concluded that information regarding both the appraised and the market value of comparable properties, "insofar as this information shows the need for the 'adjustments' contemplated by the statute, including quality, size, age and depreciation, could be potentially relevant to a determination of whether an appraisal district has appraised properties unequally." The Court upheld adjustments concerning characteristics that result in differences in appraised and market value as reflected by a price placed on various kinds of adjustments. As a result, the Court permitted pre-trial discovery regarding issues related to market value (including a recent sale) so that the appraisal district could determine what adjustments to appraised value would be appropriate.

In another memorandum opinion, the 1st Court of Appeals in Houston allowed the income approach to value to be considered in developing adjustments in equal and uniform appraisal analyses. In *Hartman REIT Operating Partnership v. Waller County Appraisal District*, 2006 Tex. App. LEXIS 5646 (Tex. App. – Houston [1st Dist.] 2006, no pet.)

(unpublished), the Court permitted rental income to be considered in valuing an office building. The appraisal district's expert testified that the income approach to value took all of the appropriate adjustment factors into consideration. The expert's analysis included the year built, the building class, total appraised value per square foot, the net operating income per square foot, and capitalization rate for each comparable property. An income adjustment was applied to reflect the differences between the comparable properties and the subject regarding their conditions, ages, sizes and quality of construction. The Court held that this analysis was appropriate and concluded that the law "did not foreclose, as a matter of law, WCAD from considering the information used by its chief appraiser, Chris Barzilla, in determining that the appraised value of Corporate Park West did not exceed the median appraised value of a reasonable number of comparable properties appropriately adjusted."

The 14th Court of Appeals addressed the issue of what is permitted in discovery regarding unequal appraisal litigation. *In re: Galveston Central Appraisal District*, 252 S.W.3d 904 (Tex. App. – Houston [14th Dist.] 2008, no pet.) involved a Valero refinery. The appraisal district requested information concerning all sales of refineries within the United States over a four-year period. The trial court limited the request to sales in Galveston County for the applicable tax years (there were no such sales). Valero requested in its discovery income and expense documents that had been provided to the appraisal district by other oil and gas companies under confidentiality agreements. The trial court denied Valero's request for this information, and both parties sought mandamus relief from the court of appeals.

The 14th Court rejected both parties' requests for relief. It found that the appraisal district's request for all refinery sales in the United States for the prior four years was overly broad and that there was no showing that the sales were similar (and could lead to the discovery of admissible evidence). The Court also held that the appraisal district did not prove that its experts could not competently and adequately appraise the property without the requested data. Discovery cannot be used simply to explore and must be reasonably tailored to include only matters relevant to the case. The Court rejected Valero's request for income and expense documents from other companies. It considered Tax Code Sections 22.27 and 25.195 together to determine that confidential information could not be released to commercial property owners,

as a matter of law. Only owners (or agents) of vacant land or residential property may inspect material or information obtained under Tax Code Section 22.27 from other owners of similar property used to appraise the subject property.

This case is important because it establishes two important rules: (1) appraisal district experts must be able to prove that they cannot prepare their unequal appraisal reports without certain information (such as closing statements or other sales documents and income and expense statements/reports) requested in discovery; and (2) confidential information as defined by Tax Code Section 22.27 may not be provided to commercial property owners in litigation, even under the exception provisions of subsection (b); the trial court must consider requests for such confidential information in discovery and issue orders dealing with such disclosure. The Court also held the following:

Assuming that first Tax Code provision [Section 22.27], stating that information submitted to an appraisal office by a property owner for valuation of the owner's property for real estate taxation purposes which would otherwise be confidential may be disclosed in a judicial or administrative proceeding pursuant to a lawful subpoena, conflicted with the second Tax Code provision [Section 25.195] stating that owner of property other than vacant land or real property used for residential purposes may not inspect any material or information obtained by appraisal office under first Property Tax Code provision, the second provision, as later-enacted statute, would prevail.⁸⁰

Another case is instructive concerning what property may be the subject of an unequal appraisal challenge. The Austin Court of Appeals upheld the trial court's dismissal of a case challenging the equality of appraisal of land only concerning property owned by a car dealership in *Covert v. Williamson County Appraisal District*, 241 S.W.3d 655 (Tex. App. – Austin 2007, pet. denied). Covert claimed that only the land appraisal was unequal. The appraisal district contended that the entire value of the account (land and improvements) must be the subject of an equity lawsuit. The Court of Appeals upheld the dismissal stating that the language of Tax Code Section 42.26 indicates that the entire value of a property must be analyzed, not just an allocated portion. It held that “so long as that valuation is an equal and uniform assessment, we cannot support overturning it because the land component is valued too high or the improvement component too low.” It held that

the clear language of Tax Code Section 42.26 referring to “a property” means the appraisal in its entirety. The Court stated that because the statute refers to appraised value of the subject property as the basis of comparison and appraised value means market value as a matter of law, “we do not agree with the Coverts that the Legislature intended to allow taxpayers to challenge the component values of their property in isolation from a consideration of the total assessed value of the property.”

These cases reflect the range of issues that courts have addressed concerning equality and uniformity of appraisal of business or commercial property. Certain methodologies have been upheld to calculate appraisal equality and uniformity. Effective age adjustments may be made, or not made, depending on the underlying data and appraisal methodology used. Discovery parameters have been established, and the fact that an entire property value must be the subject (rather than component parts) is now the law.

Conduct of Hearings Before the Hearing

Each ARB must establish procedures for hearings and, in doing so, must follow the Comptroller's model procedures, copies of which are included as Exhibit A in this manual.⁸¹ Upon request, which may be included in the owner's notice of protest or made by a separate writing delivered to the ARB on or before the date of filing of the notice of protest, a protesting property owner is entitled to a copy of the hearing procedures.⁸² The copy of the hearing procedures must be delivered to the property owner not later than the 10th day before the date the hearing on the protest begins.⁸³ Additionally, the ARB must post a copy of the hearing procedures in a prominent place in the room in which the hearing is held.⁸⁴ To the greatest extent practicable, hearing procedures must be informal.⁸⁵ Each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties and present argument on the matters subject to the hearing.⁸⁶

Generally, ARB hearings are open to the public.⁸⁷ However, notwithstanding Government Code Chapter 551 (Texas' Open Meetings Act), pursuant to Tax Code Section 41.66(d-1), the ARB must conduct a hearing closed to the public if the property owner or the chief appraiser intend to disclose proprietary or confidential information at the hearing that will assist the ARB in determining the protest. The ARB may hold closed hearing under Tax Code Section 41.66(d-1) only

on a joint motion by the property owner and the chief appraiser. Additionally, the proprietary or confidential information described in Tax Code Section 41.66(d-1) is considered information obtained under Tax Code Section 22.27.⁸⁸

Notice of Hearing

The ARB before which a protest hearing is scheduled must deliver written notice to the property owner initiating a protest of the date, time and place fixed for the hearing not later than the 15th day before the date of the hearing.⁸⁹ The board must also give the chief appraiser advance notice of each protest hearing that includes not only the date, time and place, but the subject matter as well.⁹⁰ Notice must also be delivered not later than 15 days before the date of a hearing regarding a motion brought pursuant to Tax Code Section 25.25(c) or 25.25(d).⁹¹ For such hearings, the ARB must deliver written notice of the date, time and place of the hearing to the chief appraiser, the property owner and the presiding officer of the governing body of each taxing unit in which the property is located.⁹²

Exchange of Information

After the chief appraiser has submitted the appraisal records to the ARB pursuant to Tax Code Section 25.22(a), a property owner or the owner's designated agent is entitled to inspect and copy the appraisal records relating to the owner's property, together with supporting data and schedules.⁹³ Additionally, a property owner or the agent of a property owner whose property has been appraised by a private appraisal firm under contract with an appraisal district has the right to inspect and copy, at the appraisal firm's office, appraisal firm information used or considered in appraising the owner's property.⁹⁴ This includes information showing each method of appraisal used to determine the value of the property and all calculations, personal notes, correspondence and working papers used in appraising the property.⁹⁵ The appraisal firm must make the information available for inspection and copying not later than the 15th day after delivery of a written request to inspect the information, unless a different date is agreed upon.⁹⁶ This right does not include information made confidential under Tax Code Section 22.27, except that the property owner or agent is entitled to inspect and copy any information relating to the owner's property, including otherwise confidential information.⁹⁷ This right is restricted by Tax Code Section 25.195 to owners of residential property or vacant land.⁹⁸ If a property owner or agent states under oath in a document filed with an ARB in connection with a proceeding initiated under the

protest provisions or the correction of appraisal roll provisions of the Tax Code that the appraisal firm has not complied with a request for inspection or copying related to the property that is the subject of the proceeding, the ARB may not conduct a hearing on the merits of any claim relating to the property and may not approve the appraisal records relating to that property until the ARB determines in a hearing that the appraisal firm has made the information available for inspection and copying or the property owner or agent has withdrawn the motion or protest that initiated the proceeding.⁹⁹

At least 14 days before a hearing on a protest, the chief appraiser must:

- deliver a copy of the pamphlet *Property Taxpayer Remedies* prepared by the Comptroller's office to the property owner initiating the protest if the property owner is representing himself or to an agent representing the property owner if requested by the agent;
- inform the property owner that the property owner or the property owner's agent may inspect and may obtain a copy of the data, schedules, formulas and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue; and
- deliver a copy of the ARB hearing procedures to the property owner.¹⁰⁰

Tax Code Section 41.461 expressly provides that the chief appraiser shall, at least 14 days before a protest hearing, inform the property owner that he or his agent "may inspect and may obtain a copy of the data, schedules, formulas and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue."¹⁰¹ Interpretation of this provision has been the subject of controversy among and between property owners and appraisal districts.

By way of example, in some circumstances, appraisal districts have made available to property owners more information than the appraisal districts later actually introduced at the hearing. In other circumstances, appraisal districts have made available to property owners information that the property owners claim was not in a form they could easily analyze or understand, leading to claims by property owners that they could not adequately prepare for their hearings. In yet other circumstances, appraisal districts, only considering the information they had already planned to introduce at the time the request for information was made, have made available to property owners less

information than that which they later introduced at the hearing. The range of relief requested by property owners when they feel the appraisal districts have not complied with these provisions may be broad. The Tax Code provides ARBs with at least some guidance regarding possible relief.

The Tax Code provides that “[i]nformation that was previously requested...by the protesting party that was not made available to the protesting party at least 14 days before the scheduled or postponed hearing may not be used as evidence in the hearing.”¹⁰² The Tax Code also provides that “the appraisal review board shall postpone a hearing on a protest if the property owner requests additional time to prepare for the hearing and establishes to the board that the chief appraiser failed to comply with Section 41.461.”¹⁰³ Thus, some property owners may urge exclusion of evidence; some may request hearing postponements. These provisions, however, only provide an ARB with guidance as to what types of relief may be granted; they do not provide ARBs with guidance as to how to determine when an appraisal district has complied with the requirement that information be generally available or alternatively provided on request.

ARBs will likely continue to confront disputes on this issue. Each ARB should discuss the issue as a preliminary matter and consider how such disputes will be addressed. Legal counsel should be consulted.

In any case, without regard to whether any pre-hearing request has been made, before the hearing on a protest or immediately after the hearing begins, the chief appraiser and the property owner or the property owner’s agent must provide the other with a copy of any written material that the person intends to offer or submit to the ARB at the hearing.¹⁰⁴

Hearings

When a property owner files a notice of protest, the ARB must schedule a hearing on the protest.¹⁰⁵ Hearings on Tax Code Section 25.25(c) and 25.25(d) motions are conducted in the same manner as hearings on taxpayer protests.¹⁰⁶ The ARB must provide for hearings on protests in the evening or on a Saturday or Sunday.¹⁰⁷

As previously discussed, at the beginning of a hearing on a protest, each member of the ARB hearing the protest must sign an affidavit stating that he or she has not communicated with another person in violation of Tax Code Section

41.66(f).¹⁰⁸ If an ARB member has communicated with another person in violation of Tax Code Section 41.66(f), the member must be recused from the proceeding and may not hear, deliberate on or vote on the determination of the protest. The board of directors of the appraisal district must adopt and implement a policy concerning the temporary replacement of an ARB member who has communicated with another person in violation of the Tax Code Section 41.66(f).¹⁰⁹

A hearing on a protest filed by a property owner who is not represented by an agent designated under Tax Code Section 1.111 must be set for a time and date certain. If the hearing is not commenced within two hours of the time set for the hearing, on the request of the property owner, the ARB must postpone the hearing.¹¹⁰

Additionally, on the request of a property owner or a designated agent, an ARB must schedule hearings on protests concerning up to 20 designated properties on the same day.¹¹¹ However, a property owner or designated agent may only file one such request with the ARB in a tax year.¹¹² The designated properties must be identified in the same notice of protest and the notice must contain in boldfaced type the statement “request for same-day protest hearings.”¹¹³ The ARB may schedule hearings on protests concerning more than 20 properties filed by the same property owner or designated agent and may use different panels to conduct the hearings based on the ARB’s customary scheduling.¹¹⁴ In scheduling the hearings, the ARB may follow the practices it customarily uses.¹¹⁵

An ARB decides if a protest was timely filed and whether the protest had the necessary information to constitute a protest. An ARB must make these determinations carefully; otherwise, it may find itself defending a lawsuit to compel the hearing if it denies a hearing to which a property owner was entitled under the law. If the property owner is awarded the hearing by a district court, the district court must order the hearing be held and may award court costs and reasonable attorney fees to the property owner.¹¹⁶

As suggested in the discussion of protest rights, a discussion that represents some, but certainly not all, of the protest rights provided by law, an ARB may encounter a variety of protest circumstances—including the filing of multiple protests regarding the same property. If more than one protest is filed relating to the same property, the ARB must schedule a

single hearing on all timely filed protests relating to the property.¹¹⁷ Additionally, a hearing for a property that is owned in undivided or fractional interests, including separate interests in a mineral in place, must be scheduled to provide for participation by all property owners who have timely filed a protest.¹¹⁸

If an ARB has more than three members, it may sit in panels of not fewer than three members to conduct protest hearings.¹¹⁹ However, the determination of a protest heard by a panel must be made by the entire (full) ARB.¹²⁰ If the recommendation of a panel is not accepted by the full ARB, the ARB may refer the matter for rehearing to a panel composed of members who did not hear the original hearing or, if there are not at least three members who did not hear the original protest, the full ARB may determine the protest.¹²¹ Before determining a protest or conducting a rehearing before a new panel or the full ARB, the ARB must deliver the required notice of the hearing or meeting.¹²²

If an ARB sits in panels to conduct protest hearings, protests must be randomly assigned to panels, except that the ARB may consider the type of property subject to the protest or the ground of the protest for the purpose of using the expertise of a particular panel in hearing protests regarding particular types of property or based on particular grounds.¹²³ If a protest is scheduled to be heard by a particular panel, the protest may not be reassigned to another panel without the consent of the property owner or designated agent.¹²⁴ If the ARB has cause to reassign a protest to another panel, a property owner or designated agent may agree to reassignment of the protest or may request that the hearing on the protest be postponed.¹²⁵ The ARB must postpone the hearing on such a request.¹²⁶ A change of members of a panel because of a conflict of interest, illness or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel.¹²⁷ An appraisal district or an ARB may not make decisions with regard to membership on a panel or chairmanship of a panel based on a member's voting record in previous protests.¹²⁸

The Tax Code includes several provisions addressing postponement of protest hearings (in addition to those referenced above). Postponement procedures have been incorporated into the Comptroller's Model Procedures (see Exhibit A). The provisions set forth in the Tax Code regarding postponement of hearings vary. Questions regarding applicability and legal

requirements of the various provisions should be directed to ARB legal counsel.

Subpoenas

Pursuant to Tax Code Section 41.61, if reasonably necessary in the course of a protest, the ARB, on its own motion or at the written request of a party to the protest, may subpoena witnesses or books, records or other documents of the property owner or appraisal district that relate to the protest.¹²⁹ On the written request of a party to a protest, the ARB must issue a subpoena if the requesting party shows good cause for issuing the subpoena and deposits with the ARB a sum the ARB determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed.¹³⁰ The ARB cannot issue a subpoena under Tax Code Section 41.61 unless it holds a hearing at which the ARB determines that good cause exists for the issuance of the subpoena.¹³¹ The ARB conducting a good cause hearing must deliver to the party being subpoenaed and parties to the protest written notice of the date, time and place of the hearing. The ARB must deliver the notice not later than the 5th day before the date of the good cause hearing.¹³² The party being subpoenaed must have an opportunity to be heard at the good cause hearing.¹³³ A sheriff or constable must serve a subpoena issued pursuant to Tax Code Section 41.61.¹³⁴ If the person to whom a subpoena is directed fails to comply, the ARB that issued the subpoena or the party requesting the subpoena may bring suit in the district court to enforce the subpoena.¹³⁵ If the district court determines that good cause exists for issuance of the subpoena, the court, pursuant to the Tax Code, shall order compliance.¹³⁶ The district court may modify the requirements of a subpoena that the court determines are unreasonable.¹³⁷ Failure to obey the order of the district court is punishable as contempt.¹³⁸ The county attorney or, if there is no county attorney, the district attorney must represent the ARB in a suit to enforce a subpoena.¹³⁹

An individual who is not a party to the proceeding and who complies with a subpoena issued by an ARB under Tax Code Section 41.62 is entitled to the reasonable costs of producing the documents, mileage of 15 cents a mile for going to and returning from the place of the proceeding, and a fee of \$10 a day for each whole or partial day that the individual is necessarily present at the proceedings.¹⁴⁰ The ARB may, by rule, prescribe greater mileage or a larger fee, but an increase is not

effective unless uniformly applicable to all individuals who are entitled to mileage or fee as provided under Tax Code Section 41.63.¹⁴¹ Under Tax Code Section 41.63, compensation is paid by the appraisal office if the subpoena is issued on the motion of the ARB or by the party requesting the subpoena; however, compensation is not payable unless the amount claimed is approved by the ARB.¹⁴²

Evidence by Affidavit

The property owner initiating the protest is entitled to appear before the ARB and offer evidence or argument.¹⁴³ However, the property owner need not appear in person; the property owner may offer evidence or argument by affidavit.¹⁴⁴ To offer evidence or argument by affidavit without personally appearing, the property owner must attest to the affidavit before an officer authorized to administer oaths and submit the affidavit to the ARB before it begins the hearing on the protest.¹⁴⁵ On receipt of an affidavit, the ARB must notify the chief appraiser, who may inspect the affidavit and, on request, is entitled to a copy.¹⁴⁶ To be valid, the affidavit must be attested to before an officer authorized to administer oaths and include the name of the property owner initiating the protest, a description of the property that is the subject of the protest and evidence or argument.¹⁴⁷ For purposes of the requirement to include evidence or argument, a statement from the property owner that specifies the determination or other action relating to the subject property from which the property owner seeks relief constitutes sufficient argument.¹⁴⁸ The Comptroller's office has created a standard form for an affidavit that appraisal districts must make available to property owners without charge.¹⁴⁹ However, a property owner is not required to use the Comptroller's form.¹⁵⁰

The Tax Code also provides the following directives regarding a property owner's rights with regard to submitting an affidavit:

- A property owner does not waive the right to appear in person at the protest hearing by submitting an affidavit to the ARB.¹⁵¹
- The ARB may consider the affidavit only if the property owner does not appear at the protest hearing in person.¹⁵²
- For purposes of scheduling the hearing, the property owner shall state in the affidavit that the property owner does not intend to appear at the hearing or that the property owner intends to appear at the hearing and that the affidavit may

be used only if the property owner does not appear at the hearing.¹⁵³

- If the property owner does not state in the affidavit whether the property owner intends to appear at the hearing, the ARB shall consider the submission of the affidavit as an indication that the property owner does not intend to appear at the hearing.¹⁵⁴
- If the property owner states in the affidavit that the property owner does not intend to appear at the hearing or does not state in the affidavit whether the property owner intends to appear at the hearing, the ARB is not required to consider the affidavit at the scheduled hearing and may consider the affidavit at a hearing designated for the specific purpose of processing affidavits.¹⁵⁵

Hearing Procedures

A member of the ARB may swear witnesses who testify.¹⁵⁶ All testimony must be given under oath.¹⁵⁷

Documentary evidence may be admitted in the form of a copy if the ARB determines that the original document is not readily available.¹⁵⁸ A party is entitled to an opportunity to compare a copy with the original document on request.¹⁵⁹

Official notice may be taken of any fact judicially cognizable; however, a party is entitled to an opportunity to contest facts officially noticed.¹⁶⁰

A property owner, attorney or agent offering evidence or argument in support of a protest brought under Tax Code Section 41.41(a)(1) or 41.41(a)(2) is not subject to Occupations Code Chapter 1103 (the Texas Appraiser Licensing and Certification Act), unless the person offering the evidence or argument states that the person is offering evidence or argument as a person holding a license or certificate under Occupations Code Chapter 1103.¹⁶¹ A person holding a license or certificate under Occupations Code Chapter 1103 must state the capacity in which the person is appearing before the ARB.¹⁶²

As discussed earlier, information that was previously requested by the protesting party under Tax Code Section 41.461 that was not made available to the protesting party at least 14 days before the scheduled or postponed hearing may not be used as evidence in the hearing.¹⁶³

In considering evidence, the ARB should consider applicable legal requirements, remembering that some legal requirements pertaining to evidence are found in legal sources other than the Tax Code. For example, when considering appraisal reports presented as evidence at protest hearings, ARBs must determine for what purpose the appraisals were prepared and if any restrictions exist in their use. Often the law states what is required for an appraisal to be valid. Tax Code Section 41.43(a-2) states that an appraisal report must be attested to before an officer authorized to administer oaths and include certain matters, such as a statement that the appraisal was performed in accordance with the USPAP, if the appraisal is provided to the chief appraiser under subsection (a-1). In addition, Rule 155.2 adopted by the Texas Appraiser Licensing and Certification Board (TALCB) on Feb. 15, 2013, states that “the preparation of a report or other work performed as part of any property tax consulting services on behalf of another person used to protest an unequal appraisal under Subchapter C, Chapter 41, Tax Code, is considered an appraisal or appraisal practice . . . and must conform with USPAP, if the person preparing the report or other work presents it as the product of a person licensed, certified, or approved under the Texas Appraiser Licensing and Certification Act.” The rule continues by stating that a person who is licensed as an appraiser by the TALCB and is also certified as a property tax consultant must include the USPAP disclaimer provided in the rule. A copy of the rule is found at Exhibit B.

Agreements Resolving Protests

An ARB may not review or reject agreements between a property owner or agent and the appraisal district under Tax Code Section 1.111(e).¹⁶⁴ Pursuant to Section 1.111(e), an agreement between a property owner or the property owner’s agent and the chief appraiser is final if the agreement relates to a matter that (1) may be protested to the ARB or on which a protest has been filed but not determined by the ARB or (2) which may be corrected under Tax Code Section 25.25 or on which a motion for correction under that Section has been filed but not determined by the ARB.¹⁶⁵ These agreements may be reached between the parties before a hearing, or may even be reached during a hearing. The court of appeals in *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 68-69 (Tex. App. – Houston [14th Dist.] 2007, no pet.), reviewed a case in which, during the course of testimony in a protest hearing before the ARB, the agent for the property owner presented a value and the appraisal district’s representative concurred. The court held that the agreement

had become final at the moment the appraisal district’s representative concurred and that any subsequent determinations by the ARB regarding value, including the order it entered, were irrelevant. Several appellate court decisions have addressed the same issue and ruled in accordance with the *Sondock* court.¹⁶⁶ As stated by one court, “because an appraisal review board cannot review a section-1.111(e) agreement, it necessarily cannot render an order resolving a protest based on a review of that agreement.”¹⁶⁷

Determination of Protests

If there is no agreement pursuant to Tax Code Section 1.111(e), the ARB hearing a protest must determine the protest and make its decision by written order.¹⁶⁸

If the ARB finds that the appraisal records are incorrect in some respect raised by the protest, the ARB by its order must correct the appraisal records by changing the appraised value placed on the protesting property owner’s property or by making the other changes in the appraisal records that are necessary to conform the records to the requirements of law.¹⁶⁹ If the appraised value of a taxable property interest is changed as the result of a protest or challenge, the ARB must change the appraised value of all other interests, other than an interest owned by a public utility or by a cooperative corporation organized to provide utility service, in the same property, including a mineral in place, in proportion to the ownership interests.¹⁷⁰ The ARB must deliver, by certified mail, a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser.¹⁷¹

The notice of the issuance of the order must contain a prominently printed statement in upper-case, bold lettering informing the property owner in clear and concise language of his or her right to appeal the ARB’s decision to district court, describing the deadline prescribed by Tax Code Section 42.06(a) for filing written notice of appeal, and describing the deadline prescribed by Tax Code Section 42.21(a) for filing a petition for review with the district court.¹⁷² An ARB must include with the notice of issuance of an order and the copy of the order a notice of the property owner’s rights under Tax Code Chapter 41A, relating to appeal through binding arbitration, and a copy of the Comptroller’s prescribed form for request for binding arbitration.¹⁷³ An ARB must also include with the notice of issuance of an order and the copy of the order a notice of the property owner’s rights under Government Code Subchapter Z, relating to appeal to the State Office of Administrative

Hearings (SOAH), and a copy of SOAH's prescribed form for notice of appeal under Subchapter Z.¹⁷⁴

Correction of Appraisal Roll (25.25)

The Tax Code states that the appraisal roll may not be changed except as provided by Tax Code Chapter 41 (protests, challenges, ARB corrections of clerical errors and corrections on recommendation of the chief appraiser), Tax Code Chapter 42 (judicial review) and Tax Code Section 25.25 (correction of appraisal roll).¹⁷⁵

Tax Code Section 25.25 provides rights and requirements for motions to correct the appraisal roll.¹⁷⁶ Under Tax Code Section 25.25, a person who acquires property after Jan. 1 of the tax year at issue is entitled to file any motion that Tax Code Section 25.25 authorizes the person who owned the property on Jan. 1 of that year to file, if the deadline for filing the motion has not passed.¹⁷⁷ If during the pendency of a Tax Code Section 25.25 motion the ownership of property subject to the motion changes, the new owner of the property is entitled to proceed with the motion in the same manner as the property owner who filed the motion.¹⁷⁸

Pursuant to Tax Code Section 25.25(b), chief appraisers may change the appraisal roll at any time to correct the following:

- a name or address;
- a determination of ownership;
- a description of property;
- multiple appraisals of a property; or
- a clerical error or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability.

Before the 10th day after the end of each calendar quarter, the chief appraiser must submit to the ARB and to the appraisal district's board of directors a written report of each change made under Tax Code Section 25.25(b) that decreases the tax liability of the owner of the property.¹⁷⁹ The report must include a description of each property and the name of the owner of that property.¹⁸⁰ The failure or refusal of a chief appraiser to change an appraisal roll under Tax Code Section 25.25(b) is not an action that the ARB is authorized to determine under Tax Code Section 25.25; that may be the subject of a suit to compel filed under Tax Code Section 25.25(g); that a property owner is entitled to protest under Tax Code Section 41.41; or that may be appealed under Tax Code Chapter 42.¹⁸¹

Pursuant to Tax Code Section 25.25(c), the ARB, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years to correct the following:

- clerical errors that affect a property owner's liability for a tax imposed in that tax year;
- multiple appraisals of a property in that tax year;
- the inclusion of property that does not exist in the form or at the location described in the appraisal roll; or
- an error in which property is shown as owned by a person who did not own the property on January 1 of that tax year.

The meaning of clerical error was interpreted by caselaw. In *Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal District*, 2011 Tex. App. LEXIS 4752 (Tex. App. - Corpus Christi [13th Dist.] 2011), Hidalgo County Appraisal District (HCAD) appraised Lack's inventory for tax years 2003, 2004 and 2005. For each tax year, the property owner filed protests with the ARB and subsequently negotiated settlements on the protested accounts. In 2008, the property owner filed a motion claiming clerical errors in 2003, 2004 and 2005, for failure to apply appropriate depreciation to the inventory. The ARB determined that no clerical errors had been committed during the tax years at issue and Lack's filed suit.

The 13th Court of Appeals found that failure to account for depreciation is outside the scope intended by the definition of clerical error in Tax Code Section 1.04(18). The appraisal district's alleged failure to appraise the property according to appropriate methodology, procedure or computation was not a clerical error. Tax Code Section 25.25(c) does not make available to the taxpayer the opportunity to challenge the substantive re-evaluation of a property's market value. Rather, such claims must be brought through the appeals process set forth in Tax Code Chapter 41.¹⁸²

A motion may be filed pursuant to Tax Code Section 25.25(c) regardless of whether, for a tax year to which the motion relates, the owner of the property protested under Tax Code Chapter 41 an action relating to the value of the property that is the subject of the motion.¹⁸³

Pursuant to Tax Code Section 25.25(d), at any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the ARB to change the appraisal roll to correct an error that resulted in an incorrect

appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third the correct appraised value.¹⁸⁴ If the appraisal roll is changed under Tax Code Section 25.25(d), the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value.¹⁸⁵ Payment of the late-correction penalty is secured by a lien that attaches to the property and is subject to enforced collection.¹⁸⁶ The roll may not be changed under Tax Code Section 25.25(d) under these conditions:

- (1) the property was the subject of a protest brought by the property owner under Tax Code Chapter 41, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the ARB made a determination of the protest on the merits; or
- (2) the appraised value of the property was established as a result of a written agreement between the property owner or the property owner's agent and the appraisal district.¹⁸⁷

A property owner who files a motion under Tax Code Sections 25.25(c) or 25.25(d) must comply with the tax payment requirements of Tax Code Section 25.26 or forfeit the right to a final determination of the motion.¹⁸⁸

On the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, the ARB must, by written order correct an error that resulted in an incorrect appraised value for the owner's property.¹⁸⁹

Forfeiture of Remedy for Nonpayment of Taxes (25.26)

The pendency of a motion filed under Tax Code Section 25.25 does not affect the delinquency date for the taxes on the property that is the subject of the motion. However, the delinquency date applies only to the amount of taxes required to be paid (those that are not in dispute). If the property owner pays the taxes not in dispute, the delinquency date for any additional amount of taxes due on the property is determined by Tax Code Section 42.42(c) and that additional amount is not delinquent before that date.¹⁹⁰

A property owner who files a motion under Tax Code Section 25.25 is required, before the delinquency date, to pay the amount of taxes due on the portion of the taxable value of

the property that is the subject of the motion and that is not in dispute, or forfeit the right to proceed to a final determination. The ARB may excuse the requirement based on an oath of inability to pay. On a motion of a party, the board is required to determine compliance with these provisions in the same manner and by the same procedure as provided by Tax Code Section 41.4115(d) and may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.¹⁹¹

A property owner who pays an amount of taxes greater than required does not forfeit the right to a final determination of the motion by making the payment. If the property owner makes a timely motion under Tax Code Section 25.25, taxes paid on the property are considered paid under protest, even if paid before the motion is filed.¹⁹²



CHAPTER 2

Methods of Appraising Property

This chapter covers the methods used by appraisers in appraising property for tax purposes. It is not intended to teach ARB members how to appraise property. However, it provides extensive methodology in order to give ARB members a better understanding about how property is appraised so that they may be better prepared to ask the right questions and assess the evidence presented by the parties. This part of the manual provides explanations of the law, the standards, the methods and the language used in the appraisal of property.

The intent of this chapter is to provide ARB members with information they can use to evaluate the quality and credibility of the evidence presented in a protest hearing, not so that ARB members will be able to appraise the property under protest. It is not the ARB's duty to appraise property. An ARB member, for example, typically has no training, knowledge or experience on how to measure or distinguish 20 percent good or 50 percent depreciated and, therefore, should not be forming opinions required of a trained and licensed appraiser. Indeed, it is illegal for someone, including an ARB member, to appraise property for taxation without first being certified by the Texas Department of Licensing and Regulation (TDLR). An individual commits a Class B misdemeanor if he or she performs an appraisal without being certified by TDLR.¹⁹³ A property owner, however, is qualified to testify about market value of his or her property, even if he or she is not certified by TDLR. The property owner's qualifications to testify are limited to opinions of market value of the owner's property.

ARB members will learn the basic procedures involved in carrying out property tax appraisals for various types of properties. At the conclusion of the chapter, participants will have a better understanding on how appraised value is properly developed and have a deeper understanding of the appraisal process so that they can better weigh evidence at protest hearings.

What is an Appraisal?

An appraisal is an unbiased opinion of value; it is not a statement of fact. No one can forecast the exact selling price of a property. Appraisers, however, cannot randomly assign values to properties; they must base their opinion of value on market conditions. The appraiser must avoid bias at all cost; he or she must base the opinion of value on fact, not on personal opinion.

Texas law requires that the market value of property be established by using generally accepted appraisal methods and techniques.¹⁹⁴ This means that appraisal districts have a legal duty to follow a set of industry-recognized procedures to develop an estimate of market value. An appraisal is defined in the USPAP as follows:

the act or process of developing an opinion of value; an opinion of value; of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Additionally, the comment to this definition provides that an appraisal must be numerically expressed as a specific amount, as a range of numbers or as a relationship to a previous value or numerical benchmark.¹⁹⁵

Following industry standards eliminates the potential for appraiser bias and provides methods to independently test and objectively defend the estimate of market value. While in the end an appraisal is an opinion, it is one that is based on objective processes and data and not mere guesswork.

Basic definitions involving value, which can take different forms in the appraisal and taxation process, are as follows:

- Market value means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if the following elements are present:

- o exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
- o both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
- o both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.¹⁹⁶
- Appraised value means the value determined as provided by Tax Code Chapter 23.¹⁹⁷
- Assessed value means, for the purposes of assessment of property for taxation, the amount determined by multiplying the appraised value by the applicable assessment ratio, but, for the purposes of determining the debt limitation by the Texas Constitution, means the market value of the property recorded by the chief appraiser.¹⁹⁸
- Taxable value is the amount determined by deducting from assessed value any applicable partial exemptions.¹⁹⁹

The Tax Code defines the following three distinct types of property:

- **Real property** means land; an improvement; a mine or quarry; a mineral in place; standing timber; or an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated herein. An improvement is a building, structure, fixture or fence erected on or affixed to land; a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily; or subdivision of land by plat; installation of water, sewer or drainage lines; or paving of undeveloped land.²⁰⁰
- **Tangible personal property** means personal property (property that is not real property) that can be seen, weighed, measured, felt or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim or right and has negligible or no intrinsic value.²⁰¹
- **Intangible personal property** means a claim, interest (other than an interest in tangible property), right or other thing that has value but cannot be seen, felt, weighed, measured or otherwise perceived by the senses, although its

existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract and goodwill.²⁰²

Property can change from real to personal property and from personal to real property. Minerals in place, for example, have not been removed from the ground. When they are mined, these minerals convert to personal property. A manufactured home is considered real property if the property owner designates it as such on the statement of ownership and location for the home issued under Occupations Code Section 1201.207 and files a certified copy of the statement of ownership and location in the real property records in the county in which the home is located; otherwise, it is personal property.

Appraisers distinguish between improvements, including buildings, structures, fixtures or fences and improvements-to-land, such as sidewalks, curbs, retaining walls and stock tanks. Improvements include such things as houses, barns and other buildings. Appraisers usually include the value of improvements-to-land with their opinion of land value, not their opinion of improvement value. Often, they use the term site to refer to the raw land and the improvements-to-land.

Mineral leases are an example of real property that falls under the category “any other ownership interest.” A person or company that purchases mineral rights in a property must pay property taxes on the value of that ownership interest. However, an ownership interest held by a mortgage lender or a contractor who has a lien on a property is not taxable. A lien enables the holder to take over ownership of property or force its sale if the property owner does not pay a debt he or she owes the lien holder. The lien holders cannot be taxed on the value of the lien unless they actually use it and gain possession of the property. Borrowers are liable for the property taxes as long as they retain ownership of the property.

All property that is not real property is personal or intangible property. Tangible property includes both real and personal property. If one can feel, see or touch personal property, it is tangible. If one cannot see the property itself, it is intangible. Stock in a corporation is intangible. Even though one can see the share of stock as a piece of paper, the corporation itself or the ownership interest in it cannot be seen.

Usually, ARBs do not have to be concerned with intangible property. In some instances, such property is taxable, such as the intangible property of insurance companies and savings and loans, but in most cases, it is exempt.²⁰³

Uniform Standards of Professional Appraisal Practice (USPAP)

Texas law requires that the market value of property be determined as of Jan. 1 by the application of generally accepted appraisal methods and techniques. If an appraisal district uses mass appraisal methods to determine the appraised value of property—which most do—it must comply with USPAP.²⁰⁴ The Appraisal Foundation, authorized by the U.S. Congress to oversee appraisal standards and appraiser qualifications, developed USPAP for use by professional appraisers in the United States. The industry considers USPAP as the generally accepted standards.²⁰⁵ USPAP changes every two years. The appraiser is responsible for complying with current USPAP standards when the appraisal is conducted.

The underlying purpose of USPAP is to provide the public with a level of confidence in appraisal work. By setting the standards for the work appraisers perform, as well as the qualifications for appraisers, USPAP helps ensure that appraisal work is reliable, fair and uniform. In addition to the appraisal standards, The Appraisal Foundation sets out the ethical and competency requirements that appraisers must observe and maintain.

USPAP addresses the ethical and performance obligations of appraisers through definitions, rules, standards and statements. The rules specifically address ethics, competency, scope of work and jurisdictional exceptions.²⁰⁶ USPAP provides the following standards used in appraising real, personal and business property:

- Standard 1: Real Property Appraisal, Development;
- Standard 2: Real Property Appraisal, Reporting;
- Standard 3: Appraisal Review, Development and Reporting;
- Standard 4: This STANDARD has been retired by action of the Appraisal Standards Board;
- Standard 5: This STANDARD has been retired by action of the Appraisal Standards Board;
- Standard 6: Mass Appraisal Development and Reporting;
- Standard 7: Personal Property Appraisal, Development;
- Standard 8: Personal Property Appraisal, Reporting;
- Standard 9: Business Appraisal, Development; and

- Standard 10: Business Appraisal, Reporting.

It is noted that STANDARDS 4 and 5 previously addressed real property appraisal consulting development and reporting. STANDARDS 4 and 5 have been retired due to confusion and misuse of those STANDARDS.

Most appraisal districts use mass appraisal and will be concerned with Standard 6; however, if a property owner brings in an independent appraisal, it too must comply with USPAP. If it is real property (single-family, commercial, land, etc.), Standard 1 must be followed in developing the appraisal and Standard 2 in reporting the appraisal; if it is personal property, Standard 7 applies in the development and Standard 8 in the reporting; and for business property, Standards 9 and 10 must be observed.

A mass appraisal includes the following elements:

- identifying the properties the appraisal district will appraise;
- defining a market area whose consistent behavior applies to all properties being appraised;
- identifying characteristics, such as supply and demand, that affect the formation of value in the defined market area;
- developing a model structure that reflects the relationship among the characteristics affecting value in the market area;
- calibrating the model structure to determine the contribution of the individual characteristics affecting value;
- applying the conclusions reflected in the model to the characteristics of the property the appraisal district is appraising; and
- reviewing the mass appraisal results.²⁰⁷

Like any complicated process, mass appraisal is best implemented by reducing its various parts into a model. A model is simply an expression of how things work. Once the user knows how it works, he or she can use it repeatedly with essentially the same results. A mass appraisal model explains or forecasts market value by using up-to-date, real estate data based on the three approaches to value, which will be discussed later in this manual. The International Association of Assessing Officers (IAAO) points out the following:

Mass appraisal model building requires good appraisal theory, data analysis, and research methods. The best models are accurate, rational, and explainable. Models that reflect the local market are also easier to defend.²⁰⁸

USPAP Standard 6 applies to all mass appraisals of real or personal property, whether prepared with or without computer assistance and includes rules appraisers must consider in appraising property under this method. In mass appraisal, the following is true:

...perfection is impossible to obtain...However, an appraiser must not render appraisal services in a careless and negligent manner...This Standards Rule requires an appraiser to use due diligence and due care.²⁰⁹

Mass Appraisal

An appraisal district must estimate the value of thousands of properties. The appraisal district has neither the time nor money to repeat the full appraisal process for each individual property. Instead, it uses mass appraisal. The Appraisal Foundation defines mass appraisal as “the process of valuing a universe of properties as of a given date using standard methodology, employing common data and allowing for statistical testing.”²¹⁰ The definition includes basic appraising elements used to appraise individual pieces of property, such as standard methodology and common data. Appraising properties in mass, however, requires an additional component—the use of statistical testing.

In general, property appraisal is made up of a set of procedures designed to ensure that appraisers base opinions of value on a disciplined interpretation of factual information. The appraiser submits information from the market to a series of examinations that enable him or her to develop an opinion of the value of a single property. The following four areas comprise the essential elements of an appraisal system:

- discovery of all taxable property;
- inspection of all taxable property;
- construction of system to record and maintain records of taxable property; and
- estimation of fair and uniform value of all taxable property.

No matter how small the appraisal district, no appraiser can carry out all of these steps for every property. Maintenance of the integrity of the system requires independent verification and methods to perform quality checks on data gathered, analyzed

and recorded. This requires involvement of more than one individual. It is the chief appraiser’s responsibility to assign and coordinate these tasks to ensure the quality of the data. One staff appraiser may spend the majority of his or her time collecting ownership information, a second may concentrate on inspecting existing property, a third may focus on inspecting new property and a clerk may enter the data into the appraisal record-keeping system.

Because mass appraisers must work with large numbers of properties, appraisers must alter their discipline accordingly. Mass appraisers attempt to find the value of a typical property of a given type and then use that typical value to estimate the value of specific properties. Since every appraisal district has a variety of different types of properties, the first step in mass appraisal is to classify properties and determine what kinds of properties are typical in the appraisal district.

Mass appraisers then devise a value schedule for each type of property included in the appraisal district’s classification system. The set of improvement schedules, for example, include at least one schedule for single-family residences, one for commercial properties and one for multi-family residences. The market in the appraisal district determines the kinds of schedules necessary.

The process of building a value schedule involves the following basic steps:

- Step 1** Developing a classification system.
- Step 2** Collecting information on sales.
- Step 3** Posting sales to the appropriate category.
- Step 4** Calculating appropriate time adjustments and applying them to sale prices.
- Step 5** Adjusting sale prices of individual properties to eliminate any features that are not typical of their category.
- Step 6** Selecting the value from each category that best represents the typical value per unit of measure.
- Step 7** Calculating adjustments with which to tailor typical values to specific properties.

Step 5 distinguishes mass appraisal most clearly from appraisal of a single piece of property. Since mass appraisal aims to deal quickly with large numbers of properties, it devises values for categories. To find those values for categories, appraisers must eliminate all unique features of the individual properties within the group. They must then adjust

sales information so that it will reflect the market value not of the specific property sold, but of a typical property that lacks any unique features. At Step 7, appraisers produce adjustment figures which enable the schedule to work. These adjustments allow them to convert typical values back into values appropriate for specific properties.

In practice, mass appraisal does not progress as methodically as the seven-step process suggests. An appraisal district can construct a preliminary classification system, but must modify it as information on sales is collected. Obviously, sales cannot be posted until the appraisal district has perfected its classification scheme. The classification system might, for example, separate classes of single-family houses according to number of bedrooms.

All value schedules are different because all markets are different. Deciding what types of properties are typical can present tremendous difficulties, but that effort to classify properties is at the heart of mass appraisal. A value schedule cannot be any better than the classification system on which it is based.

Although it is possible to build a value schedule for land in the same way a schedule for improvements is built, those steps are not really necessary. Location, topography and use all tend to go together. Locations are also identified by use of residential areas, central business districts, warehouse districts, industrial parks and other categories. The appraisal district must develop adjustments to apply to properties identified as non-typical. Nonetheless, compared with the adjustments improvements require, the total number of adjustments to land prices should be small.

Characteristics of Mass Appraisal

What is the difference between mass appraisal and appraisal of a single piece of property? One difference is simply scale. Valuing a single property involves problems of an entirely different nature from those faced by an appraiser valuing 10,000 parcels. The mass appraisal process has a number of general characteristics that distinguish it from single property appraisal.

One such characteristic is centralization of authority. While a sole and independent contractor may appraise a single property, the mass appraisal process is more than a single individual can undertake. Typically, tasks are divided among administrators and field appraisers.

A second characteristic is standardization of appraisal procedures. Not only must a large number of properties be appraised, they must be appraised in a manner that conforms to law and does not discriminate. This means that a great deal of the art of appraisal is replaced by standard operating procedures designed to minimize the difference in the treatment of properties and to make the treatment of properties routine.

A third characteristic is synchronization of tasks. When one person performs all the tasks in an appraisal, the tasks are performed in a proper order. Where, however, one person directs, a second develops valuation tools, a third collects data, a fourth uses the tools and the data to appraise and a fifth draws on the work of the other four in producing an appraisal roll, it is essential that the work of the five be synchronized so that one does not wait on another so that the roll is produced on time.

Maximization, the fourth characteristic, is a commitment to getting the most value for the dollar spent. The mass appraisal balances cost per parcel, time involved per appraisal and accuracy of appraisal in producing a product that meets the requirements of the jurisdiction.

A fifth characteristic is repetition. Many of the tasks performed in a mass appraisal are highly repetitive—from taking measurements to collecting data to filing. The mass appraisal system typically provides for repetitive tasks to be handled in a routine manner.

Division of labor concerns all of the above characteristics. It means that rather than having each person perform all the tasks required, the appraisal district employs specialists who perform a limited range of tasks over and over. These six characteristics—centralization, standardization, synchronization, maximization, repetition and division of labor—are essential elements of mass appraisal.

Jurisdictional Exceptions

USPAP provides exceptions to its general standards. The jurisdictional exception rule may apply to STANDARD 6 mass appraisal “because ad valorem tax administration is subject to various state, county and municipal laws.”²¹¹

Jurisdictional exception is defined as an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or regulation applicable to the assignment.²¹² If any part of

USPAP is contrary to the law or regulation of any jurisdiction, only that part shall be void for that jurisdiction. The purpose of the rule is to provide a severability clause if one or more parts of USPAP is contrary to a state or local law. Law, in this context, means a body of rules with binding legal force established by a controlling governmental authority. It includes federal and state constitutions, statutes, case law, administrative rules and local ordinances and regulations.²¹³

There are numerous jurisdictional exceptions in the Tax Code, which require deviations from USPAP standards. Compliance with these laws is required and will not create violations of USPAP. Examples include, but are not limited to, the following special appraisal requirements found in Tax Code Chapter 23:

- productivity value of agricultural land;²¹⁴
- productivity value of timber land;²¹⁵
- consideration of governmental taking of property;²¹⁶
- inventory appraisal of real or personal property as a unit;²¹⁷
- dealer inventory appraisals;²¹⁸
- appraisal of mineral interests not being produced;²¹⁹
- appraisal of oil and gas interests;²²⁰ and
- nominal valuation of property owned by non-profit homeowner organizations.²²¹

Other special appraisal provisions are included in Tax Code Chapter 23 and other federal, state and local laws. These provisions do not violate USPAP, but instead are jurisdictional exceptions to USPAP that must be followed regardless of generally accepted appraisal standards.

Mass Appraisal and the Three Approaches to Value

An appraisal district using mass appraisal cannot use the three approaches to value in the same way that a single property appraiser does because of the number of taxable properties in the appraisal district and the limited time within which the appraisal district must complete its work. Instead, appraisal districts develop property categories on the basis of market analysis and use elements of these approaches to convert market data into value schedules. The three approaches to value are incorporated into the mass appraisal process.

Three Approaches to Value

The law requires that in determining the market value of property, the chief appraiser must consider the cost, income and market data comparison methods of appraisal and use

the most appropriate method.²²² These methods, however, are not exclusive; the chief appraiser may use other methods or a combination of methods so long as they produce defensible market value.

The market data comparison approach focuses on the sale of comparable properties and requires an active market in sales of comparable properties. The cost approach estimates the cost of replacing an improvement and requires the appraiser to estimate replacement cost and accrued depreciation. Appraisers using the cost approach must also use the market or income approach to estimate land value. The income approach examines the income stream a property produces and requires that the subject property be able to produce income and that the appraiser have enough information to develop a capitalization rate. The capitalization rate expresses in numbers the relationship between a property's income potential and its present value.

In appraising single pieces of property, all three approaches are used whenever possible, checking the results of one method against the others before estimating the final value. In mass appraisal, an appraisal district combines techniques from the three separate approaches.

Market Data Comparison Approach

Since appraisers are aiming to determine market value, it is not surprising that they generally consider the market data comparison approach as the most accurate method of appraisal. It is noted that the Appraisal Institute identifies this technique as the sales comparison approach. These two techniques are synonymous. Appraisers use this approach whenever possible because it focuses directly on the actions of buyers and sellers in the marketplace and, therefore, usually produces the best results. The market data comparison approach works best when the subject property is not so unique that few comparable properties ever sell. Oil refineries, for example, can differ widely, depending on when they were built and what kinds of refining processes they use.

The market data comparison approach has two distinct advantages over the cost and income approaches. First, the market data comparison approach can be used for any kind of property—improved or unimproved and income-producing or not. Second, because it focuses directly on buyers and sellers in the market, it is most likely to produce reasonable valuations. At the same time, the market data comparison

approach cannot be used if there are not enough comparable sales. Appraisal districts can usually find enough comparable residential sales, but other types of properties do not sell frequently, and when they do there may be intangible value included in the sale.

Because the market data comparison approach derives market value from the sale prices of properties comparable to the subject, appraisers must identify and describe the subject property precisely. Appraisers must determine who owns the various legal rights to the property and discover any limitations (such as easements, covenants or deed restrictions) on that ownership. In order to select appropriate comparables, appraisers must discover what features of the subject property add to or detract from its market value.

Comparables must resemble the subject as closely as possible. The more the appraiser knows about the subject property, the more exactly he or she is able to match comparables to it.

The appraiser should inspect the subject property and comparables because the law requires that an appraiser follow accepted appraisal practices. Measuring and sketching the improvements rather than accepting someone else's figures is very important. Calculating the area and re-checking the math is equally important.

The market data comparison approach requires appraisers to perform the following four steps:

- Step 1** Selecting properties that are similar to the property being appraised (the subject) that have recently sold.
- Step 2** Listing differences between these properties (comparable properties) and the subject.
- Step 3** Calculating adjustments and adjusting the comparables to the subject.
- Step 4** Estimating the subject's value from the adjusted values of the comparables.

Selecting Comparable Properties

Appraisers do not always find sufficient comparables that closely resemble the subject. The market data comparison approach requires the same information on properties that are similar to it and which have recently sold be gathered. The subject property determines the type of sales information needed. A single-family residence, for example, does

not require that information on warehouses be collected. An appraisal office should have sales and property information organized in its files according to a classification system that enables the appraiser to search the files for information on sales of properties similar to the subject by using the description of the subject.

Comparable sales should resemble the subject as closely as possible in the following six features:

- location;
- age;
- size of improvements;
- land area;
- architectural style; and
- date of sale.

Since the subject has not sold, the appraiser must consider date of sale in relation to Jan. 1. The more closely a comparable property resembles the subject, the easier to calculate and the more accurate the appraisal.

All comparables are not created equal. Good comparables require fewer adjustments and ensure a more accurate appraisal. If the appraiser cannot find good comparables, he or she will need to use more properties to ensure accurate adjustments.

Listing Similarities and Differences

None of the comparable sales will match the subject precisely. The appraiser must develop a way of describing, classifying and evaluating the differences between the subject property and the comparables. Major factors distinguish subjects and comparables, including:

- property rights transferred with the sale;
- financing;
- conditions of sale (motivation);
- expenditures made after the sale;
- market conditions (date of sale);
- physical characteristics;
- location;
- use;
- economic characteristics; and
- non-realty components.

The appraiser must know what transferred (property rights) in each sale. Some property sells with the price representing

tangible and intangible value. A sale needs to reflect a cash transaction because the premises behind market value require this. The definition of market value requires that the buyer and seller are well-informed, not under duress and acting in their own best interest. If the sale price reflects abnormal motivation conditions, the price must be adjusted or the comparable excluded. If a property sells needing to be updated or renovated, the expenditures made after sale will adjust the comparable to market standards reflecting the money for the rehabilitation or renovation costs.

If one comparable sold in January and one in July, and if the effective date of the appraisal is Jan. 1, the appraiser has to find a way to account for the different dates. If one comparable sold with a low down payment and a high interest rate and another sold on an assumed mortgage with a low interest rate, the appraiser has to convert both sale prices into values in current dollars. Real estate agents frequently identify location as the single factor that most influences the sale price of a home; thus, if comparables from neighborhoods different from the subject's are available, the influence of location on value must be taken into account.

Physical characteristics cover a number of factors, including size of the lot, the area of the improvements, original construction quality and condition. The appraiser must also consider special features and amenities. Garages, swimming pools, greenhouses, fences, heating and cooling systems and custom features all influence the market value of the subject and comparables.

The remaining factors can include economic characteristics, use and non-realty adjustment considerations. The adjustment for economic characteristics reflects differences in ability to generate income, differences in vacancy or expense structures and even differences that could be expressed in different capitalization rates. However, appraisers must take care not to adjust in this category when they have already adjusted for the same difference in another category, such as location. Use factors could include private (deed restrictions) or public use (zoning) restriction differences. Non-realty items are sometimes included in a sale price. If the appraiser is only appraising real property, this must be excluded.

Adjusting the Comparables

The appraiser must assign a value to each difference between the subject and the comparables and adjust the sale price of

each comparable so that it will reflect the price at which the subject should sell. Adjustments fall into one of three categories: those made as of the date of sale, a market conditions adjustment and those that should be made as of the date of the appraisal (Jan. 1). Adjustments made at time of sale include property rights conveyed, financing, conditions of sale (motivation) and expenditures anticipated to be made at the date of sale. The next adjustment category is market conditions (time), which includes adjustments for changes in market conditions between the sale date of the comparable and Jan. 1 and for inflation or deflation. The last category of adjustments is related to differences for location, use, economic characteristics, physical differences and non-realty components. These adjustments must always be applied to the comparable, not the subject. If the comparable's price is less than the subject, the appraiser adjusts the comparable's price upward. If the comparable's price is higher than the subject, the appraiser adjusts the comparable's price downward to reflect a value for the subject.

Deriving an Opinion of the Subject's Value

Comparables establish a range of possible values and a determination must be made where within that range the subject falls. Deriving this final opinion of the subject's market value requires an appraiser's judgment; it cannot be reduced to a simple mathematical process.

In general, an appraiser looks within the range established by the highest and lowest comparables to see which comparable most closely matches the subject. He or she also looks for the comparables sold on the dates closest to the effective date of the appraisal. Before making the final opinion, the appraiser must identify the comparables with the smallest number of adjustments and the comparables with the amount of total adjustments closest to zero. A decision may be required to reject the comparable with the lowest number of adjustments or with the amount of net adjustments closest to zero because another comparable more adequately reflects the subject. The comparable with the highest or lowest value may provide the best indication of the subject's value. The subject's value may also fall between the values indicated by two comparables.

Only one hard and fast rule governs the final opinion of value: **the appraiser must not average the indicated values of the comparables to arrive at an opinion of the subject's value.** There is no set of steps to use as a substitute for judgment and experience. The final opinion should not be arbitrary or

random, but the appraisal cannot be reduced to a mechanical formula. The appraiser must rely on judgment and experience when examining comparables.

Appraising Land

The market data comparison approach is the preferred method of appraising any property, but it is especially critical to the appraisal of land. Since land cannot be reproduced, appraisers cannot use the cost approach in valuing it. The income approach is often inappropriate because much land does not produce income. However, the income approach to land is acceptable if the land is rented, such as with a ground lease, or if there is income-producing potential for the land. Acceptable methods of land valuation include sales comparison, allocation, extraction, ground rent capitalization, land residual and subdivision. Ground rent capitalization is a procedure where estimated net market rent of land is capitalized with a capitalization rate. In most cases, the process of elimination dictates that appraisers employ the sales comparison approach to estimate the land value. Whether used on land, improvements or whole properties, the basics of the market data comparison approach remain the same.

Appraising Improvements

Improvements present an appraiser with a set of problems different from those that land presents. Land does not depreciate, but improvements do. Therefore, an appraiser must develop a way to account for the effects of weather, neglect, changes in architectural style and other forces that can cause a structure to lose value. Moreover, differing construction techniques and materials produce structures that differ in quality. Appraisers must recognize and evaluate differences in the construction type and construction quality of improvements. Finally, differences in size and amenities also influence the value of improvements and appraisers must know how to interpret their impact on market values.

Cost Approach

When using the cost approach to determine the market value, the chief appraiser must use cost data obtained from generally accepted sources; make appropriate adjustments for physical, functional or external obsolescence; and clearly state the reason for any variation between generally accepted cost data and locally produced cost data if the data vary by more than 10 percent.

The cost approach is usually used when market sales data is not available. It works best on newer improvements. Older improvements often contain outdated materials or were constructed using outdated techniques. Estimating the replacement cost and accrued depreciation of older properties is difficult.

A focus on the estimated cost involved in constructing an improvement distinguishes the cost approach from the other approaches to value. Because of this focus, an appraiser using the cost approach must always use a second appraisal approach to determine land value, usually the sales comparison approach.

The cost approach follows the following four basic steps:

- Step 1** Determining the value of the land without any improvements on it and under its highest and best use as though vacant.
- Step 2** Estimating the cost of replacing or reproducing the improvements.
- Step 3** Estimating and subtracting the value lost to accrued depreciation in order to arrive at the indicated value of the existing improvement.
- Step 4** Adding the indicated improvement value to the land value.

Using the cost approach requires good judgment. The cost approach provides the only reasonable way to estimate the value of many special use properties—aircraft hangars, for example, or museums, convention halls, fraternal lodges and other non-income-producing properties for which there are no comparable sales. Knowledge of the cost approach is essential to effective mass appraisal.

Defining Cost

An estimate of replacement cost indicates what a typical builder charges to construct a building of equal utility to the subject. Reproduction cost tells what a typical builder charges to construct an exact replica.

An estimated reproduction cost more reflects the actual improvements than an estimated replacement cost. Reproduction cost estimates are tailored to the specific subject property. To estimate reproduction cost, however, a great many details must be examined, including carpeting, bathroom fixtures, attics, ceilings, interior wall coverings and others.

These features may influence property value considerably, but property tax appraisers seldom have the opportunity to complete a detailed inspection of a house's interior. For this reason, appraisers often cannot estimate reproduction cost.

The elements of cost include direct and indirect cost and entrepreneurial incentive (profit). Direct costs (hard costs) are materials and labor. Indirect costs include architect fees, attorney fees, appraiser fees, financing fees, construction interest, marketing expenses and other related costs that are not materials or labor. Entrepreneurial incentive is the amount an entrepreneur expects or wants to receive as compensation for expertise and for assuming risks associated with project development. The previous examples relate to the four agents of production land, labor, capital and coordination.

Depreciation

Estimating an amount for accrued depreciation is probably the most difficult task in all appraisal work. Some elements of depreciation—a broken window, for example—can hardly escape an appraiser's notice; but other elements, such as substandard wiring, are hidden beneath a building's surface. Still others, such as the negative or positive impact of a floor plan, may influence only a few buyers. Still, cost is not the same thing as market value; an appraiser must determine the dollar amount of losses arising from problems with a building's condition, design and surrounding environment. The total of these losses equals accrued depreciation. Subtracting accrued depreciation from the cost to build a new structure leaves the estimated market value of the improvements.

Physical depreciation is from normal wear and tear and aging of improvements. Functional obsolescence is loss from poor or substandard layout, design, appearance, etc. It can also be caused by a super-adequacy, which is that some aspect of the subject property exceeds market norms. External obsolescence is from economic and locational sources. Economic obsolescence is from poor market conditions that cause loss in value. Locational external obsolescence is from the property being located adjacent to or near a nuisance or property that causes loss in value.

Accrued depreciation can be defined as an improvement's loss of value from all causes relating to the property itself, its use and possible uses and the uses of surrounding properties. Accrued depreciation includes all loss from replacement or reproduction cost as of Jan. 1.

Cost Approach in Mass Appraisal

Mass appraisers have historically relied on the cost approach more than any other method. Before computers came into widespread use, a cost table provided just about the only way to appraise a large number of properties in a uniform manner. Even now, the mass appraisal process is quite similar to an appraisal using the cost approach: classify and measure the improvement, multiply the size times the appropriate value from the table, estimate and adjust for depreciation and add land value to arrive at total property value.

Basically, the procedures for developing a value schedule based on cost are the same as those for developing one based on market data. The values in a cost schedule reflect typical building costs; the values in a market schedule reflect typical sale prices. Appraisers compile information and build a cost schedule in much the same way that they compile sales information and build a market schedule.

Building a cost-based value schedule and the depreciation table to accompany it has the following eight steps:

- Step 1** Analyzing the market to identify value factors.
- Step 2** Developing profiles of benchmark properties.
- Step 3** Collecting cost information.
- Step 4** Posting cost information to appropriate benchmark properties.
- Step 5** Deriving typical costs for benchmark properties.
- Step 6** Developing field procedures for classifying properties and adjusting preliminary value estimates for specific properties.
- Step 7** Using market data to develop depreciation tables.
- Step 8** Testing the schedule for accuracy and uniformity.

All cost appraisals depend upon an accurate opinion of land value. Land values in the area are used to test a cost schedule.

Income Approach

Appraisers use the income approach only to appraise properties that generate income or have a definite and predictable prospect of producing income. The income method assumes that potential buyers will base the amount they are willing to pay for a property on the income that the property currently produces and will produce in the future.

Since a property must be capable of generating income before the income approach can be used to appraise it, the income

approach is seldom the best choice for appraising single-family residences. Nonetheless, the income approach can be used on single-family residences when the rental market for such properties is active.

Income appraisals are more suitable for commercial property, even if the property is not producing income at the time of the appraisal. The income approach can be used on an unoccupied commercial building because the income that the property produces under typical ownership and management can be estimated. The income approach can also produce reliable values on industrial property.

The Tax Code requires appraisers to use the income approach on property that qualifies for special valuation, such as agricultural, timber and open-space land.

The income approach follows three basic steps:

- Step 1** Determining the subject property's net annual income.
- Step 2** Determining the capitalization rate.
- Step 3** Dividing net annual income by the capitalization rate in order to arrive at property value.

Using the income approach requires a considerable amount of information about property sales, interest rates, buyers' expectations, financing terms and property income. In essence, the income approach requires estimating the future benefits of ownership and converting them into an indication of present worth.

The fundamental process involved in any income approach is the conversion of anticipated net income into an estimated value. The traditional income approaches use a single year's income to determine value. The expectation of change and even a future sale of the property are built into the capitalization rate used to convert the single year's income to value.

Expenses required for maintaining the property's income stream must be subtracted from effective gross income. However, only certain expenses are deducted. Fixed expenses of property taxes and insurance are appropriate deductions from effective gross income. Variable expenses of management, utilities, landscaping, janitorial and other expenses directly related to operating the property are also deducted. The total

of these expenses should be consistent with the ratio of like properties in the market.

Inappropriate expenses for the income approach that are not deducted include income taxes, entity expenses (from choice of ownership vehicle), capital improvements and other non-operating expenses. To find property value, net operating income is divided by the capitalization rate. This returns the property's net operating income, which is what is capitalized into value.

Capitalization Rate

After estimating income, appraisers use a capitalization rate to determine value. The simplest method of deriving a market capitalization rate is to divide the net operating income from a comparable property sale by its adjusted sale price. Expressed in a formula, this would read as follows:

$$R = I \div V$$

In the equation, R is the capitalization rate, I is the net operating income and V is the sale price. The net operating income would have to reflect only those expenses normally used by appraisers and recognized in the market. The appraiser must also consider how the subject property compares with the comparable property to ensure the sale price of the comparable property meets the conditions of the subject property's market.

Using a capitalization rate derived from highly comparable sales is generally regarded as the most accurate form of income capitalization. If an income-producing property sells and if the net operating income is available, the net operating income can be divided by the sale price to arrive at an overall capitalization rate. The appraiser then estimates a capitalization rate that best represents the subject property. Other methods of determining overall capitalization rates include band of investment analysis, debt coverage analysis, residual techniques and surveys.

A capitalization rate in its simplest form is the conversion of net operating income into an opinion of value. How this is done can have adverse consequences if miscalculated, as may be seen from the following passage taken from the IAAO's *Property Appraisal and Assessment Administration*:

Small errors in estimating the capitalization rate will have a pronounced effect on the estimate of property value. For

example, estimating the capitalization rate at 9 or 11 percent instead of 10 percent will change the estimated value by approximately 10 percent. For this reason, capitalization rates should be derived with care and supported with market data.²²³

Appraisal of Business Personal Property

Items not permanently affixed to, or part of, real estate are generally considered personal property. As a general rule, an item is personal property if it can be removed without serious injury to the real estate or to the item itself.

Rendition of Personal Property

Except with regard to rolling stock, an individual who owns or manages tangible personal property as of Jan. 1 used for the production of income must render it for taxation. A rendition statement for property valued at \$20,000 or more must include the following:

- the name and address of the property owner;
- a description of the property by type or category;
- if the property is inventory, a description of each type of inventory and a general estimate of the quantity of each type of inventory;
- the physical location or taxable situs of the property; and
- the property owner's good faith opinion of the market value of the property or, at the option of the property owner, the historical cost when new and the year of acquisition of the property.²²⁴

This general rule regarding rendition of personal property is intended to give the ARB member an overview of this provision of the Tax Code. For exceptions or variations to this general provision, please consult the Tax Code or your attorney.

Situs of Personal Property

The appraisal of personal property is more difficult than the appraisal of real property because it is easily concealed and frequently moved. For these reasons it is often difficult to determine situs for personal property.

Generally, tangible personal property is taxable by a taxing unit if it is located in the unit on Jan. 1 for more than a temporary period; if it normally is located in the unit, even though it is outside the unit on Jan. 1, if it is outside the unit

only temporarily; or, if it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period. It also has situs if the property owner resides or maintains a principal place of business in the unit and the property is taxable in Texas but the property is not located in the unit on Jan. 1 or is not located in any one place for more than a temporary period but is normally returned to the unit between uses.²²⁵

Valuation of Personal Property

In appraising tangible personal property, the appraiser gives recognition to the trade level at which property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level.

Inventory Valuation

The Tax Code provides, with certain particular exceptions, that the market value of inventory is the price for which it would sell as a unit to a purchaser who would continue the business.²²⁶ An inventory includes residential real property that has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented and produces no income.²²⁷

Special Problems in Inventory Appraisal

Some larger stores do not operate the entire store themselves, but lease certain sections to separate concerns. For example, many automotive departments in discount stores are leased. As these stores render their inventory, there is no guarantee either that leased departments are included or that the inventory of leased departments will be rendered separately. It is a good practice to ask the management of a large store if such leased departments exist. Once their existence is established, the inventories of such departments are treated as small stores of a particular type. When the larger store's inventory valuation is developed for the entire store, this figure is reduced by the leased departments' inventory value. This amounts to valuing the leased departments separately and allocating the residual inventory to the main store.

Consigned goods, like all other personal property, are taxable to the property owner or consignor. Since the property is found in the hands of the consignee, an assessment is sometimes made against the consignee. This assessment

is properly made against the property owner, the consignor, since the consignee has no title to the goods. If the property owner is unknown, the holder or consignee is responsible until the property owner can be identified. Such property is taxable and should be appraised.

Valuation of Commercial and Industrial Personal Property

In the absence of specific market data, replacement cost of a new item, less depreciation, is considered a logical approach to the valuation of commercial and industrial personal property. An appraiser may estimate replacement cost either by indexing known historical costs or by using a standard valuation guide. Next, the appraiser must estimate the actual physical depreciation that has accrued.

Commercial and industrial inventories, supplies and spare parts are valued at the lower of cost or market. Special equipment items such as computers are given special consideration because of a short economic life due to advances in technology. Appraisal of mobile machinery and tools, such as switch engines, gantry cranes and forklifts depends on their size. The larger items are valued individually using current market prices for similar, used equipment as a guide. The smaller items are grouped into an average service life and treated in the same manner as furniture and fixtures.

Often the cost figures on leased equipment are not available to the appraisal district. Since manufacturers, in this case, are essentially final users, the retail level of trade rather than manufacturer's level is the proper level at which to value the property. The lack of retail selling prices necessitates the use of another approach to value in these situations.



Conclusion

This manual was developed as a continuing education program for ARB members. The Comptroller has provided a comprehensive introductory course to new ARB members for many years. This course augments the introductory course by discussing legal and appraisal issues in greater detail. It is designed for ARB members who are serving beyond one year.

The manual addresses the Legislature's concerns that ARBs remain independent and impartial in their deliberations. It attempts to increase ARB members' ability to consider and weigh evidence at protest hearings with the skill necessary to ensure fairness to both the property owner and the appraisal district.

While this course presents legal issues in greater detail, discussing court cases and attorney general opinions that have interpreted the Tax Code, it is not a law book and ARB members should not treat it as one. The law regarding property taxation, like the law in other areas of life, is constantly changing and evolving. ARB members should therefore use this manual as a guide, but should consult their attorneys when legal questions arise.

By the same token, this course discusses appraisal methods in much greater detail than the introductory course, but it is not an appraisal manual. Like the law, appraisal work is complex. This manual provides the methods appraisers use as a means for ARB members to weigh the validity and relevance of evidence. The ARB may retain an appraiser certified by the Texas Appraiser Licensing and Certification Board to instruct it on valuation methodology if the appraisal district provides for the instruction in the appraisal district's budget.²²⁸

Most ARB members are neither property tax attorneys nor trained appraisers and this manual is neither a law book nor an appraisal manual. ARB members should consider the manual a guide and an important resource in weighing evidence presented at a protest hearing, but should consult their attorney when an issue is not clear or questions arise.

Pursuant to Tax Code Section 5.041, the Comptroller's office established a toll-free telephone number dedicated to serving ARB members. ARB members needing assistance regarding technical questions relating to the duties and responsibilities of ARB members and property appraisal issues may call 1-800-252-7551 and leave a message. A Property Tax Assistance Division (PTAD) staff person will contact you with the information you need.



EXHIBIT A

Model Appraisal Review Board Hearing Procedures



Model Hearing Procedures for Appraisal Review Boards

I. ARB Membership

[Tax Code Section 5.103(b)(16), (15), and (12)]

1. Administration of ARB Appointments

ARB members are not provided any statutory role in the process for the administration of applications or requests for appointment for membership on the ARB. If an ARB member is contacted by an individual regarding requesting an appointment to the ARB, the member shall direct the individual to the person designated to receive applications or requests for appointment for the ARB.

2. Conflicts of Interest

Each ARB member is responsible for ensuring that he or she does not have any conflict of interest that results in ineligibility to serve on the ARB or restricts or prohibits the ARB member's participation in ARB activities, such as participation in the determination of a taxpayer protest. An ARB member must promptly report any conflict of interest to the ARB chairman in addition to any other individual or entity as may be provided by law. The chairman shall ensure prompt notification of reported conflicts of interest to the appropriate individuals.

If an ARB member discovers before or during a protest hearing that a conflict of interest exists, the member may not participate in a protest hearing. If the conflict exists due to the provisions of the Local Government Code Chapter 171, an affidavit must be filed with the secretary of the ARB. The affidavit must be filed as soon as the conflict is identified, even if it requires a delay in the conduct of the hearing. If the conflict arises from Tax Code Section 41.69, no affidavit must be filed; however, the ARB member must recuse himself or herself immediately from the hearing and report the conflict to the chairman or secretary of the ARB.

ARB members must remember that while Local Government Code Chapter 171 addresses matters of "substantial interest," Tax Code Section 41.69 applies to any protest in which an ARB member is interested (i.e. there is no requirement under Tax Code Section 41.69 that the interest be substantial). Therefore, while a conflict of interest under Local Government Code Chapter 171 may not prohibit an ARB member from participation in a protest, Tax Code Section 41.69 may still prohibit participation. If an ARB member has a question as to whether or not he or she has a conflict of interest that

might prohibit his or her involvement, the member shall immediately contact the ARB chairman to address the matter.

In the recusal process, the ARB member not only may not vote on the matter that is the subject of the protest, but also may not hear or deliberate on the protest.

3. Ex Parte and Other Prohibited Communications

ARB members shall not engage in prohibited ex parte or other communications. If an ARB member is approached by one or more individuals that appear to be engaging or attempting to engage in a prohibited communication, the ARB member shall immediately remove himself or herself from the conversation.

II. ARB Duties

[Tax Code Section 5.103(b) (1), (5), and (6)]

1. Statutory Duties of an ARB

Each ARB member is responsible for ensuring that he or she understands the statutory duties of the ARB and shall comply with all statutory requirements in performing statutory duties as a member of the ARB.

2. Notices Required under the Property Tax Code

Each ARB member is responsible for obtaining and maintaining familiarity with notices required under the Property Tax Code. If an ARB member has reason to believe that any notice that is required by law to be provided by the ARB is not being provided or does not meet the requirements of applicable law, the ARB member shall promptly notify the ARB chairman. The ARB chairman shall investigate each such report and take appropriate action to correct all verified problems.

3. Determination of Good Cause under Tax Code Section 41.44(b)

“Good cause” for filing late protests is not defined in Tax Code Section 41.44(b). Claims of good cause for late-filed protests should be carefully considered and standards in making determinations of good cause under Tax Code Section 41.44(b) should be uniformly applied. The ARB should give due consideration to good cause claims in such a manner that properly respects the rights of property owners while not undermining or contravening laws related to filing deadlines or the orderly and expeditious fulfillment of ARB duties.

III. ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff)

[Tax Code Section 5.103(b)(3), (4), (7), and (14)]

1. Scheduling Hearings Generally

The ARB shall schedule a hearing when a timely notice of protest is filed and, in doing so, may be provided with clerical assistance by the appraisal district.

2. Scheduling Hearings for Property Owners not Represented by Agents

Pursuant to Tax Code Section 41.66(i), hearings filed by property owners not represented by agents designated under Tax Code Section 1.111 shall be scheduled for a specific time and date. More than one protest may be scheduled for hearings at the same time and date; however, if a hearing for a property owner is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time, the ARB is required to postpone the hearing, if a postponement is requested by the property owner. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

3. Scheduling Hearings for Multiple Accounts

If requested by a property owner or a designated agent, hearings on protests concerning up to 20 designated properties shall be scheduled on the same day by the ARB. The request must meet all requirements of Tax Code Section 41.66(j), including the required statement in boldfaced type: “request for same-day protest hearings.” No more than one such request may be filed in the same tax year by a property owner or a designated agent. Also pursuant to Tax Code Section 41.66(j), the ARB may schedule hearings on protests concerning more than 20 properties filed by the same property owner or designated agent and may use different panels to conduct the hearings based on the ARB’s customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under Section 41.66(j).

4. ARB Panel Assignments

If an ARB sits in panels as authorized by Tax Code Section 41.45(d), protests shall be assigned randomly, except that the ARB, with or without clerical assistance from the staff of the appraisal district, may consider the type of property or the protest grounds in order to assign the protest to a panel with members who have particular expertise.

Once a protest is scheduled to be heard by a specific panel, it shall not be reassigned to another panel without the consent of the property owner or a designated agent. If the ARB has cause to reassign a protest to another panel, the owner or designated agent may

agree to the reassignment or request a postponement of the hearing. The ARB is required to postpone the hearing if requested in this situation. Pursuant to Tax Code Section 41.66(k), “[a] change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel.”

5. Postponements Under Tax Code Section 41.45(e)

A property owner who is not represented by an agent under Tax Code Section 1.111 is entitled to one postponement of a hearing without showing cause, if the request is made before the date of the hearing. The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, an ARB panel, or the ARB chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chairman or the chairman’s representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

In addition and without limit as to the number of postponements, the ARB shall postpone a hearing if the property owner or his/her designated agent at any time shows good cause, as defined in Tax Code Section 41.45(e-2). The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, an ARB panel, or the ARB chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chairman or the chairman’s representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

In addition and without limit, the ARB shall postpone a hearing if the chief appraiser consents to the postponement. The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, an ARB panel, or the ARB chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chairman or the chairman’s representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

6. Postponements Under Tax Code Section 41.45(e-1)

A property owner or a person designated by the property owner as the owner's agent to represent the owner at the hearing who fails to appear at the hearing is entitled to a new hearing if the property owner or the owner's agent files, not later than the fourth day after the date the hearing occurred, a written statement with the ARB showing good cause, as defined in Tax Code Section 41.45(e-2), for the failure to appear and requesting a new hearing.

7. Postponements Under Tax Code Section 41.45(g)

The ARB must postpone a hearing to a later date if:

- (1) the owner of the property or the owner's agent is also scheduled to appear at a hearing on a protest filed with the ARB of another appraisal district;
- (2) the hearing before the other ARB is scheduled to occur on the same date as the hearing set by this ARB;
- (3) the notice of hearing delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the notice of hearing delivered by this ARB or, if the date of the postmark is identical, the property owner or agent has not requested a postponement of the other hearing; and
- (4) the property owner or the owner's agent includes with the request for a postponement a copy of the notice of hearing delivered to the property owner or the owner's agent by the other ARB.

8. Postponements Under Tax Code Section 41.66(h)

The ARB shall postpone a hearing (one time only) if the property owner requests additional time to prepare for the hearing and establishes that the chief appraiser failed to comply with Tax Code Section 41.461. Only the property owner may request a postponement for this reason. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

9. Postponements Under Tax Code Section 41.66(i)

Hearings on protests filed by property owners not represented by agents designated under Tax Code Section 1.111 shall be scheduled for a specific time and date. More than one protest may be scheduled for hearings at the same time and date; however, if a hearing for a property owner is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time, the ARB is required to postpone the hearing, if a postponement is requested by the property owner. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

10. Postponements Under Tax Code Section 41.66(k)

If a protest is scheduled to be heard by a particular panel, the protest may not be reassigned to another panel without the consent of the property owner or designated agent. If the ARB has cause to reassign a protest to another panel, a property owner or designated agent may agree to reassignment of the protest or may request that the hearing on the protest be postponed. The ARB shall postpone the hearing on that request. A change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

IV. Conduct of ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff)

[Tax Code Section 5.103(b)(2), (9), and (10)]

1. Conducting Hearings Open to the Public

For most protest hearings, the hearing should be conducted in the following order:

- a. Commence the hearing and announce the assigned protest number, property location and owner, and other identifying information.
- b. Announce that, in accordance with Tax Code Section 41.45(h), all written material that has not been provided must be provided.
- c. State that the ARB members who are considering the protest have not communicated with anyone about the protest and have signed affidavits to that effect.
- d. Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
- e. Ask if any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board and if the witness is appearing in that capacity.
- f. Inform witnesses that all testimony must be given under oath and swear-in all witnesses who plan to testify.
- g. Unless both parties otherwise agree, the property owner (or agent, as applicable) shall present his/her case first.
- h. If the property owner or agent presents his/her case first, he/she shall present evidence (documents and/or testimony). If witnesses are present, the property owner or agent may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- i. Next, the appraisal district representative may cross-examine the property owner, the agent, or the representative and/or witnesses.

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- j. If the property owner or agent presented his/her case first, the appraisal district representative shall present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
 - k. Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
 - l. Members of the ARB shall not be examined or cross-examined by parties.
 - m. The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
 - n. The other party may then offer rebuttal evidence.
 - o. The party presenting its case first shall make its closing argument and state the ARB determination being sought.
 - p. The party presenting its case second shall make its closing argument and state the ARB determination being sought.
 - q. The ARB or panel chairman shall state that the hearing is closed.
 - r. The ARB or panel shall deliberate orally. No notes, text messages, or other form of communication are permitted.
 - s. The ARB or panel chairman shall ask for a separate motion for each matter that was the subject of the protest hearing. The motion should include the exact value or issue to be determined. A vote shall be taken and recorded by a designated appraisal district staff person or member of the ARB assigned for this purpose. Separate motions and determinations must be made for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).
 - t. Thank the parties for their participation and announce the determination(s) of the ARB and that an order determining protest will be sent by certified mail.

If computer screens are used by ARB members during ARB hearings for reviewing evidence and other information, computer screens also must be available to property owners and agents at the hearings to view the same information that is presented to the ARB members by the appraisal district staff. This requirement is met if the property owner or agent can see all information displayed on at least one computer screen in the hearing location (there is no requirement that the property owner or agent be provided a separate screen).

The property owner or agent and the appraisal district representative are prohibited from debating each other. All communications must be directed to the ARB members, except for examination or cross-examination during testimony of witnesses or parties testifying at the hearing.

For taxing unit challenges, motions to correct appraisal records, protests regarding exemptions, or other matters that may be the subject of ARB hearings, the ARB should follow the order of conducting hearings above, but may make exceptions for the type of hearing.

Records for each ARB proceeding must be kept according to Tax Code Section 41.68 and Comptroller Rule 9.803. The secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention.

2. Conducting Hearings Closed to the Public

A joint motion by the chief appraiser and the property owner is required to request that the hearing be closed due to intent to disclose proprietary or confidential information that will assist the ARB in determining the protest.

The ARB or panel chairman shall convene the hearing as an open meeting and then announce that the meeting will be closed to the public as permitted by Tax Code Sections 41.66(d) and (d-1). Only the parties to the protest, their witnesses, and the ARB members are permitted to stay in the hearing room. The same order of proceedings as for hearings open to the public should be followed.

The secretary of the ARB is responsible for ensuring that a separate tape recording or written summary of testimony is kept for the closed meeting in accordance with the provisions of Comptroller Rule 9.803 generally. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is confidential according to Tax Code Section 22.27 and shall be marked as “confidential” and maintained as confidential in the ARB records for proper handling. At the conclusion of the hearing, the ARB panel shall confirm with the parties that all proprietary and confidential information has been appropriately identified by the ARB. The confidentiality of the information must be maintained by the ARB members and disclosed only as provided by law.

After deliberation, the ARB shall reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting. There must be no mention of the proprietary or confidential information during the open meeting.

3. Right to Examine and Cross-Examine Witnesses or Other Parties

Tax Code Section 41.66(b) states that “each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing.” The ARB may not prohibit this entitlement in any way; however, it may enforce time limits and dictate the order of ARB hearings for witness examination and cross-examination. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence.

4. Party’s Right to Appear by an Agent

The ARB shall accept and consider a motion or protest filed by an agent if an agency authorization is filed at or before the hearing on the motion or protest. The ARB may not require that an agency authorization be filed at an earlier time. The ARB may not require

a person to designate an agent to represent the person in a property tax matter other than as provided by Tax Code Section 1.111.

V. Evidence Considerations

[Tax Code Section 5.103(8), (11), and (13)]

1. A Party's Right to Offer Evidence and Argument

The ARB may not prohibit a party's right to offer evidence and argument. However, the ARB may enforce time limits and dictate the order of ARB hearings. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence and argument. The ARB should, schedule permitting, provide as much time as possible to each party to a hearing to fully present evidence and offer argument.

2. Prohibition of Consideration of Information Not Provided at the ARB Hearing

In a protest hearing, the ARB will not consider any appraisal district information on a protest that was not presented to the ARB during the protest hearing. In order for any appraisal district record (i.e., appraisal roll history, appraisal cards) to be considered by the ARB, it must be presented as evidence by or on behalf of a party (e.g. chief appraiser, appraisal district representative, property owner, agent, or witness) at the protest hearing.

3. Exclusion of Evidence Required by Tax Code Section 41.67(d)

If it is established during a protest hearing that information was previously requested under Tax Code Section 41.461 by the protesting party and that the information was not made available to the protesting party at least 14 days before the scheduled or postponed hearing, the requested information not made available may not be used as evidence in the hearing. The ARB shall make a determination to exclude evidence under Tax Code Section 41.67(d) only if evidence presented at the hearing establishes that: (1) the information sought to be excluded as evidence was not made available at least 14 days before the hearing; and (2) the information sought to be excluded as evidence was previously requested by the protesting party.

VI. Other Issues

[Tax Code Section 5.103(17)]

1. Compliance with the Law, Integrity, and Impartiality

Members of the ARB shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the ARB.

2. Patience and Courtesy

ARB members must be patient, dignified, and courteous to parties appearing before the ARB.

3. Bias or Prejudice

Members of the ARB shall perform their ARB duties without bias or prejudice.

4. Confidential Information

Members of the ARB shall not disclose or use for any purpose unrelated to ARB duties confidential information acquired in the performance of ARB duties.

December 4, 2013
Property Tax Assistance Division
Texas Comptroller of Public Accounts

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EXHIBIT B

22 Texas Administrative Code Section 155.2

Texas Administrative Code

TITLE 22

EXAMINING BOARDS

PART 8

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 155

RULES RELATING TO STANDARDS OF PRACTICE

RULE §155.2

Work Relating to Property Tax Protests

(a) The preparation of a report or other work performed as part of any property tax consulting services on behalf of another person used to protest an unequal appraisal under Chapter 41, Subchapter C or Chapter 42, Subchapter B of the Tax Code, is considered an appraisal or appraisal practice for the purposes of §155.1(a) of this chapter (relating to Standards of Practice) and must conform with Uniform Standards of Professional Appraisal Practice (USPAP), if the person preparing the report or other work presents it as the product of a person licensed, certified, registered, or approved under the Texas Appraiser Licensing and Certification Act.

(b) A person licensed, certified, registered, or approved under the Texas Appraiser Licensing and Certification Act who is also certified as a property tax consultant under Chapter 1152 of the Tax Code, must include the USPAP disclaimer set out in subsection (c) of this section whenever that person prepares a report or other work used to protest unequal appraisal under Chapter 41, Subchapter C or Chapter 42, Subchapter B of the Tax Code, solely under the authority of a property tax consultant certification.

(c) The USPAP disclaimer required under this section must:

(1) be located directly above the preparer's signature;

(2) be in at least 10-point boldface type; and

(3) read as follows: USPAP DISCLAIMER: I AM LICENSED OR CERTIFIED AS A REAL PROPERTY APPRAISER AND A PROPERTY TAX CONSULTANT. THIS REPORT WAS PREPARED IN MY CAPACITY AS A PROPERTY TAX CONSULTANT AND MAY NOT COMPLY WITH THE REQUIREMENTS FOR DEVELOPMENT OF A REAL PROPERTY APPRAISAL CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OF THE APPRAISAL STANDARDS BOARD OF THE APPRAISAL FOUNDATION.

Source Note: The provisions of this §155.2 adopted to be effective March 14, 2013, 38 TexReg 1681



Endnotes

- ¹ Tex. H.B. 2317, 81st Leg., Reg. Sess. (2009), amending Tex. Tax Code §5.041
- ² *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 70 (Tex. App. – Houston [14th Dist.] 2007, no pet.)
- ³ *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 70 (Tex. App. – Houston [14th Dist.] 2007, no pet.)
- ⁴ Tex. Tax Code §6.01(c)
- ⁵ Tex. Tax Code § 6.41(a)
- ⁶ *Program Centers of Grace Union Presbytery, Inc. v. Earle*, 726 S.W.2d 628, 630 (Tex. App. – Fort Worth 1987, no writ); *Towne Square Assocs. v. Angelina County Appraisal Dist.*, 709 S.W.2d 776, 778 (Tex. App. – Beaumont 1985, no writ); *Corchine Partnership v. Dallas County Appraisal Dist. and Dallas County Appraisal Review Board*, 695 S.W.2d 734, 735 (Tex. App. – Dallas 1985, writ ref'd n.r.e.)
- ⁷ Tex. Tax Code §§6.41, 6.43 and 5.041(e-1)(5)
- ⁸ Tex. Tax Code §6.412(c)
- ⁹ Tex. Tax Code §6.412(a)(1)
- ¹⁰ Tex. Tax Code §6.412(a)(3)
- ¹¹ Tex. Tax Code §6.413(a)
- ¹² Tex. Tax Code §6.413(b)
- ¹³ Tex. Tax Code §6.413(c)
- ¹⁴ Tex. Tax Code §41.66(f)
- ¹⁵ Tex. Tax Code §41.66(f)
- ¹⁶ Tex. Tax Code §41.411(a)
- ¹⁷ Tex. Tax Code §6.411(c-1)
- ¹⁸ Tex. Tax Code §5.041(g)
- ¹⁹ Tex. Tax Code §41.66(g)
- ²⁰ Tex. Tax Code §41.41(a)
- ²¹ Tex. Tax Code §25.25
- ²² Tex. Tax Code §23.01(a)
- ²³ Tex. Tax Code §1.04(7)
- ²⁴ Tex. Tax Code §41.41(a)(1)
- ²⁵ Tex. Tax Code §41.41(a)(2)
- ²⁶ Tex. Tax Code §41.41(a)(3)
- ²⁷ Tex. Tax Code §11.13
- ²⁸ *North Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991) (citations omitted)
- ²⁹ Tex. Tax Code §§23.46, 23.55, 23.76 and 23.9807
- ³⁰ Tex. Tax Code §§23.46(c), 23.55(e), 23.76(e) and 23.9807(f)
- ³¹ Tex. Tax Code §41.44(a)(4)
- ³² Tex. Tax Code §41.411(a)
- ³³ Tex. Tax Code §41.411(b)
- ³⁴ Tex. Tax Code §41.411(c)
- ³⁵ Tex. Tax Code §41.4115(a)
- ³⁶ Tex. Tax Code §41.4115(b) and (d)
- ³⁷ Tex. Tax Code §41.4115(c)
- ³⁸ Tex. Tax Code §41.4115(d)
- ³⁹ Tex. Tax Code §41.412(a)
- ⁴⁰ Tex. Tax Code §41.412(b)
- ⁴¹ Tex. Tax Code §41.413
- ⁴² Tex. Tax Code §41.413(d)
- ⁴³ Tex. Tax Code §41.413(d)
- ⁴⁴ Tex. Tax Code §41.413(c)
- ⁴⁵ Tex. Tax Code §41.42
- ⁴⁶ Tex. Tax Code §41.42
- ⁴⁷ *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 45 (Tex. 2007)
- ⁴⁸ Tex. Tax Code §41.43(a)
- ⁴⁹ Tex. Tax Code §41.43(a)
- ⁵⁰ Tex. Tax Code §41.43(a-1) and (a-3)
- ⁵¹ Tex. Tax Code §23.01(e)
- ⁵² Tex. Tax Code §41.43(a) and (a-4)
- ⁵³ Tex. Tax Code §41.41(a)(1)
- ⁵⁴ Tex. Tax Code §41.41(a)(2)
- ⁵⁵ Tex. Tax Code §41.43(a)
- ⁵⁶ Tex. Tax Code §41.43(a)-(a-1)
- ⁵⁷ Tex. Tax Code §41.43(a-1)
- ⁵⁸ Tex. Tax Code §41.43(a-1)
- ⁵⁹ Tex. Tax Code §41.43(a-2)
- ⁶⁰ Tex. Tax Code §41.43(a-1)
- ⁶¹ Tex. Tax Code §41.43(a-3)
- ⁶² Tex. Tax Code §41.43(a-5)
- ⁶³ Tex. Tax Code §41.43(a-5)
- ⁶⁴ Tex. Tax Code §41.43(a-4)
- ⁶⁵ Tex. Tax Code §23.01(c)
- ⁶⁶ Tex. Tax Code §23.01(e)
- ⁶⁷ Tex. Tax Code §23.01(e)
- ⁶⁸ Tex. Tax Code §23.01(e)
- ⁶⁹ Tex. Tax Code §23.01(e)
- ⁷⁰ Tex. Tax Code §41.43(a), (d)
- ⁷¹ Tex. Tax Code §41.43(d)
- ⁷² Tex. Tax Code §41.43(d)
- ⁷³ Tex. Tax Code §41.43(d)
- ⁷⁴ Tex. Tax Code §41.43(b)
- ⁷⁵ Tex. Tax Code §41.43(b)
- ⁷⁶ Tex. Tax Code §41.43(c)
- ⁷⁷ *Harris County Appraisal District v. United Investors*, 47 S.W.3d 648, 650 n.4 (Tex. App. – Houston [14th Dist.] 2001, no writ)
- ⁷⁸ *Weingarten Realty Investors v. Harris County Appraisal District*, 93 S.W.3d 280, 286 (Tex. App. – Houston [14th Dist.] 2002, no writ)
- ⁷⁹ *Harris County Appraisal District v. Kempwood Plaza*, 186 S.W.3d 155, 161 (Tex. App. – Houston [1st Dist.] 2006, no writ)
- ⁸⁰ *In re: Galveston Central Appraisal District*, 252 S.W.3d 904, 905 (Tex. App. – Houston [14th Dist.] 2008, no pet.)
- ⁸¹ Tex. Tax Code §5.103(d) and §41.66(a)
- ⁸² Tex. Tax Code §41.66(a)
- ⁸³ Tex. Tax Code §41.66(a)
- ⁸⁴ Tex. Tax Code §41.66(a)
- ⁸⁵ Tex. Tax Code §41.66(b)
- ⁸⁶ Tex. Tax Code §41.66(b)
- ⁸⁷ Tex. Tax Code §41.66(d)
- ⁸⁸ Tex. Tax Code §41.66(d-2)
- ⁸⁹ Tex. Tax Code §41.46(a)
- ⁹⁰ Tex. Tax Code §41.46(a)-(b)
- ⁹¹ Tex. Tax Code §25.25(e)
- ⁹² Tex. Tax Code §25.25(e)
- ⁹³ Tex. Tax Code §25.195(a)
- ⁹⁴ Tex. Tax Code §25.195(c)
- ⁹⁵ Tex. Tax Code §25.195(c)
- ⁹⁶ Tex. Tax Code §25.195(d)
- ⁹⁷ Tex. Tax Code §25.195(c)
- ⁹⁸ Tex. Tax Code §25.195(b)
- ⁹⁹ Tex. Tax Code §25.195(e)
- ¹⁰⁰ Tex. Tax Code §41.461(a)
- ¹⁰¹ Tex. Tax Code §41.461(a)(2)
- ¹⁰² Tex. Tax Code §41.67
- ¹⁰³ Tex. Tax Code §41.66(h)
- ¹⁰⁴ Tex. Tax Code §41.45(h)
- ¹⁰⁵ Tex. Tax Code §41.45(a)
- ¹⁰⁶ Tex. Tax Code §25.25(m)
- ¹⁰⁷ Tex. Tax Code §41.71
- ¹⁰⁸ Tex. Tax Code §41.66(g)
- ¹⁰⁹ Tex. Tax Code §41.66(g)
- ¹¹⁰ Tex. Tax Code §41.66(i)
- ¹¹¹ Tex. Tax Code §41.66(j)

- 112 Tex. Tax Code §41.66(j)
 113 Tex. Tax Code §41.66(j)
 114 Tex. Tax Code §41.66(j)
 115 Tex. Tax Code §41.66(j)
 116 Tex. Tax Code §41.45(f)
 117 Tex. Tax Code §41.45(a)
 118 Tex. Tax Code §41.45(a)
 119 Tex. Tax Code §41.45(d)
 120 Tex. Tax Code §41.45(d)
 121 Tex. Tax Code §41.45(d)
 122 Tex. Tax Code §41.45(d)
 123 Tex. Tax Code §41.66(k)
 124 Tex. Tax Code §41.66(k)
 125 Tex. Tax Code §41.66(k)
 126 Tex. Tax Code §41.66(k)
 127 Tex. Tax Code §41.66(k)
 128 Tex. Tax Code §41.66(m)
 129 Tex. Tax Code §41.61(a)
 130 Tex. Tax Code §41.61(b)
 131 Tex. Tax Code §41.61(c)
 132 Tex. Tax Code §41.61(c)
 133 Tex. Tax Code §41.61(c)
 134 Tex. Tax Code §41.62(a)
 135 Tex. Tax Code §41.62(b)
 136 Tex. Tax Code §41.62(b)
 137 Tex. Tax Code §41.62(b)
 138 Tex. Tax Code §41.62(b)
 139 Tex. Tax Code §41.62(c)
 140 Tex. Tax Code §41.63(a)
 141 Tex. Tax Code §41.63(b)
 142 Tex. Tax Code §41.63(c)-(d)
 143 Tex. Tax Code §41.45(b)
 144 Tex. Tax Code §41.45(b)
 145 Tex. Tax Code §41.45(b)
 146 Tex. Tax Code §41.45(b)
 147 Tex. Tax Code §41.45(i)
 148 Tex. Tax Code §41.45(j)
 149 Tex. Tax Code §41.45(k)
 150 Tex. Tax Code §41.45(l)
 151 Tex. Tax Code §41.45(n)
 152 Tex. Tax Code §41.45(n)
 153 Tex. Tax Code §41.45(n)
 154 Tex. Tax Code §41.45(n)
 155 Tex. Tax Code §41.45(n)
 156 Tex. Tax Code §41.67(a)
 157 Tex. Tax Code §41.67(a)
 158 Tex. Tax Code §41.67(b)
 159 Tex. Tax Code §41.67(b)
 160 Tex. Tax Code §41.67(c)
 161 Tex. Tax Code §41.66(l)
 162 Tex. Tax Code §41.66(l)
 163 Tex. Tax Code §41.67(d)
 164 Tex. Tax Code §41.01(b)
 165 Tex. Tax Code §1.111(e)
 166 See, e.g., *Hartman v. Harris County Appraisal Dist.*, 251 S.W.3d 595 (Tex. App. – Houston [1st Dist.] 2007, pet. denied); *Loposer v. Harris County Appraisal Dist.*, 2009 Tex. App. LEXIS 5532 (Tex. App. – Houston [14th Dist.] 2009, no pet)(unpublished); *Amidei v. Harris County Appraisal Dist.*, 2009 Tex. App. LEXIS 5559 (Tex. App. – Houston [1st Dist.] 2009, no pet)(unpublished); *Prince v. Harris County Appraisal Dist.*, 2009 Tex. App. LEXIS 8 (Tex. App. – Houston [14th Dist.] 2009, no pet)(unpublished); *Verm v. Harris County Appraisal Dist.*, 2008 Tex. App. LEXIS 4900 (Tex. App. – Houston [14th Dist.] 2008, no pet)(unpublished); *Kelly v. Harris County Appraisal Dist.*, 2011 Tex. App. LEXIS 966 (Tex. App. Houston [1st Dist.] February 10, 2011, no pet.)
 167 *MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist.*, 249 S.W.3d 68, 83 (Tex. App. – Houston [1st Dist.] 2007, pet. denied)
 168 Tex. Tax Code §41.47(a)
 169 Tex. Tax Code §41.47(b)
 170 Tex. Tax Code §41.47(b)
 171 Tex. Tax Code §41.47(d)
 172 Tex. Tax Code §41.47(e)
 173 Tex. Tax Code §41A.02
 174 Tex. Gov't Code §2003.908
 175 Tex. Tax Code §25.25(a)
 176 Tex. Tax Code §25.25
 177 Tex. Tax Code §25.25(i)
 178 Tex. Tax Code §25.25(j)
 179 Tex. Tax Code §25.25(b)
 180 Tex. Tax Code §25.25(b)
 181 Tex. Tax Code §25.25(o)
 182 *Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal District*, 2011 Tex. App. LEXIS 4752, at *6 (Tex. App. – Corpus Christi [13th Dist.] 2011, pet. denied)
 183 Tex. Tax Code §25.25(l)
 184 Tex. Tax Code §25.25(d)
 185 Tex. Tax Code §25.25(d)
 186 Tex. Tax Code §25.25(d)
 187 Tex. Tax Code §25.25(d)
 188 Tex. Tax Code §25.25(e)
 189 Tex. Tax Code §25.25(h)
 190 Tex. Tax Code §25.26(a)
 191 Tex. Tax Code §25.26(b) and (d)
 192 Tex. Tax Code §25.26(c)
 193 Tex. Occ. Code §1151.252
 194 Tex. Tax Code §23.01(b)
 195 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, p. U-1
 196 Tex. Tax Code §1.04(7)
 197 Tex. Tax Code §1.04(8)
 198 Tex. Tax Code §1.04(9)
 199 Tex. Tax Code §1.04(10)
 201 Tex. Tax Code §1.04(5)
 202 Tex. Tax Code §1.04(6)
 203 Tex. Tax Code §11.02
 204 Tex. Tax Code §23.01(b)
 205 The Appraisal Foundation, *What is USPAP?* (2009)
 206 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, page U-6
 207 For a complete discussion of Standard 6 see Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, Appraisal Standards Board, U46-56
 208 Robert J. Gloudemans, *Mass Appraisal of Real Property*, p. 75
 209 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, p. U-47
 210 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, p. U-4
 211 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, p. U-46
 212 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, p. U-3
 213 Uniform Standards of Professional Appraisal Practice, 2012-13 Edition, p. U-15
 214 Tex. Tax Code §23.51
 215 Tex. Tax Code §23.73
 216 Tex. Tax Code §23.11
 217 Tex. Tax Code §23.12
 218 Tex. Tax Code §§23.121-23.128
 219 Tex. Tax Code §23.17
 220 Tex. Tax Code §23.175
 221 Tex. Tax Code §23.18
 222 Tex. Tax Code §23.0101
 223 Property Appraisal and Assessment Administration, (1990), p. 236
 224 Tex. Tax Code §22.01
 225 Tex. Tax Code §21.02
 226 Tex. Tax Code §23.12
 227 Tex. Tax Code §23.12
 228 Tex. Tax Code §5.041(h)



Statement of Compliance

In compliance with Tax Code Section 5.041, this form must be completed and submitted to the Texas Comptroller of Public Accounts upon completion of the mandatory Appraisal Review Board (ARB) new member training or upon completion of the mandatory continuing education training for returning ARB members. An ARB member may not participate in a hearing conducted by the ARB, vote on a determination of a protest, or be reappointed to an additional term on the ARB unless the person has completed the appropriate ARB training course, has received a certificate of course completion and has completed this statement indicating agreement to comply with the Tax Code in conducting ARB hearings.

I, _____,
Print name

ARB member for the county of _____,
County

successfully completed the Comptroller's ARB new member/continuing education training program on
_____, offered in _____, Texas.
Date City

Pursuant to Tax Code Section 5.041, I hereby affirm that I will comply with Tax Code requirements governing
ARB protest hearing procedures.

Print
Here → _____
Print Name

Sign
Here → _____
Signature Date

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